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T H E C
Office and Authority
O F A
Justice of Peace:

Collected out of all the Books, whether of *Common* or *Statute-Law*, hitherto written on that Subject.

Shewing also the DUTY of
Constables, Commissioners of Sewers, Coroners,
Overseers of the Poor, Surveyors of the Highways,
Church-Wardens, and other Parish-Officers:

Digested under
ALPHABETICAL TITLES.

To which are added,
Precedents of Indictments and Warrants:
Never before Printed.

Very useful for Justices of the Peace, Coroners,
Sheriffs, Clerks of the Assises, and of the Peace,
and all others concern'd in such Matters:

The Fourth Edition, Corrected, Amended, and
continued.

By ^o**W. Nelson**, of the *Middle-Temple*, Esq;

¹²⁰
London: Printed for *Charles Harper*, and Sold by
John Hooke, at the *Flower-de-Luce*, over against
St. Dunstan's Church in *Fleetstreet*, 1714.

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THE

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OF A
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Rec. Jan. 28, 1701.

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By J. Smith, Esq. of the Middle-Temple, Esq.
continued.

Printed for Charles Hays, and sold by
at the Fleet, as above-mentioned.

St. Dunstons Church in Fleet-street, 1701.

T O

The Right Honourable

Thomas Lord Pelham,

Baron of

L A U G H T O N.

S I R,

TH O' it may seem a Piece of
Vanity in me to express what
Esteem I have for a just and
good Magistrate; yet since you are
that very Person, it can be no Com-
plement to you to publish it before
these Papers which treat of his Office
and Authority.

It was this which lately advanced
you to the Service of the Publick in
an Eminent Place of Trust, which you
discharged with that Fidelity and Firm-
ness of Mind, that in the midst of a
vast Treasure you looked upon Riches

DEDICATION.

with Indifferency, and gave the World a sufficient Demonstration that you could make even Interest it self give Place to Integrity.

'Tis true, you are intitled by your Birth to those Noble Advantages of a Family and Fortune; but by a steady and virtuous Life, you have found out a nearer Way to Honour, than either of those could lead you; for by this Means, you really are what other Men would be thought to be.

Such a Character needs no Varnish, that being neither the Design of this Dedication, nor consistent with that Respect which is justly due to your Person. 'Tis Custom, if any Thing, which must justify this Address; and since a more proper Occasion may not happen, I shall make Use of this, to express my Self,

*Your Obliged and
Faithful Servant,*

W. N.

THE

PREFACE.

THE Office of a Justice of Peace did at first consist chiefly in Suppression of Riots and unlawful Assemblies, it being usual in former Times, for Men of Estates to give Liveries every Year to rude and disorderly People who were not their Menial Servants; and this was to engage them in all their Quarrels for that Year, otherwise they were to forfeit double the Value of those Liveries.

The Justices of Peace in those Days had Power by several Statutes to punish those Offences; which was done sometimes at the Quarter-Sessions, and often upon View, or upon Proof by Witnesses.

But their Authority being much enlarged, during the Civil Wars between the Houses of York and Lancaster, and there being no Directions for them in the Execution of their Office, but such as lay dispersed in a Multitude of Statutes; it then became necessary to write something in a peculiar Manner relating to their Office; which was first attempted by Mr. Marrow, in the Reign of K. Henry the Seventh, and publish'd by him at that Time.

About Twenty Years afterwards, Sir Anthony Fitzherbert, who was a Judge of the Common-Pleas, and also another Wise Man, (but who he was, Mr. Crompton doth not tell us) collected some other Materials for their Instruction; both which were publish'd in the Reign of K. Henry the Eighth,

The

The Preface.

The Judge's Book was about Sixty Years afterwards enlarged by Mr. Crompton, and was then in so great Esteem, that the second Impression of it was sold in less than three Years after the first was publish'd.

And yet Mr. Lambard, who was a Learned Man, and certainly a very competent Judge, did not think that Book a sufficient Guide to these Magistrates; because about Twenty Years after it was publish'd, he wrote another Treatise on the same Subject.

Upon this Foundation, Mr. Dalton compil'd his Country-Justice, which appears very plainly throughout that whole Book; for in many Places it is no more than a Repetition of what was written by them; and because he would not alter the Sense, he has often transcrib'd it Word for Word.

Of this Nature are all the Books published since that Time, relating to this Matter, which are transcrib'd from each other without Order or Method; and therefore I shall take no farther Notice of them, but give the Reader some short Account of the following Sheets.

And First, I can give no better Reason for my undertaking this Work, than Mr. Dalton alledged several Years since; who tells us, That the Expiration and Discontinuance of many Statutes, put him upon composing his Book; and I think, the Repeal of many old, and the Additions of such a vast Number of new Statutes since he wrote, may reasonably pass for an Excuse as to this Matter.

And as to the Book it self, I think nothing material is omitted therein which hath hitherto been written upon this Subject; and to avoid Repetitions, I have collated the Whole under several Heads in an Alphabetical Manner.

And since Justices of the Peace are now enabled by several Statutes to hear and punish Persons out of Sessions, (which was rarely done in former Days, but in Cases of Force and Riots) I have under each Title mention'd all Things proper to it; and where Indictments will lie for the Offence, they are added to each Title; and where

a more

The Preface.

A more Summary Way of Punishment is necessary, I have added Warrants proper for such Purposes; viz. in all Cases where the Justices have Power by Law to punish Offenders out of Sessions, some of which Warrants are upon new Statutes, and never printed before.

I have avoided, as much as possible, all obsolete Words and Things which are of no Use, or which are compos'd in a Style or Method not suitable to the present Age.

I have likewise added some new Titles, which though not immediately relating to the Office of a Justice of Peace, yet are not altogether impertinent to the Subject-Matter; and I have left out many Things which serve only to stuff and enlarge a Book, and which are neither useful nor pleasant to the Reader.

In this Edition, I have taken a more particular Care, to add to each Title such Resolutions which have been made in the Superior Courts at Westminster, and which properly relate to such Titles: And this, I hope, may prove both Pleasant and Instructive to all Inferior Magistrates, without taking any Pains or Trouble to search any farther into the many larger Volumes of the Law.

I have taken this Method, because those Justices of the Peace who are not Lawyers, are seldom furnished with such Books, and not often with Keble's Statutes. So that I think it impertinent to annex any Tables of References to such Statutes (which some new Revisors of this Subject have lately done) because those Gentlemen are usually diverted from reading long and accumulated Acts of Parliament, by the innocent Pleasures and Affairs of a Country Life.

Therefore I have chosen under each Title to mention so much of any Statute to which it relates, and to shew (amongst other Things) what Judgments have been given in those Superior Courts relating to it; which I have done with that Exactness, that I think there is not one Case omitted in all the printed Reports which I have not applied to the Title it concerneth, and this was never yet done by any of those who have compos'd former Books of this Nature.

The Preface.

So that now those Justices of the Peace, who can spare but a very little Time to peruse these Papers, may be so well informed in every Thing concerning their Office, that they may act in Conformity to these Great Courts above, and by this Means keep up the Dignity and Reputation of the Court of Quarter-Sessions; where, by a plain and easie Distribution of Justice, the Peace may be preserved throughout the whole Country: And if this is done as it ought, their Judicature will not be despised, nor their Administration exposed to Reflection, as too often it is.

This is the best Account, because it is the truest I can give of the following Treatise, composed by

Middle-Temple,
Nov. 18. 1709.

W. N.

Abju-

E R R A T A.

PAge 436. Line ult. for fat Sheep from 2 d. 4 l. to 6 s. read fat Sheep from 2 s. 4 d. to 6 s. which the Reader is desired to mend with a Pen.

Abjuration,

THIS was a Punishment inflicted at Common Law 2 Inst. 201.
for Felony only, and then the guilty Person did
usually fly to the Sanctuary of some Church,
where he was to confess the Fact before the
Coroner of the Place within forty Days, and
then was to take an Oath to be banished perpetually, but
not to a Country of Infidels.

Some Alterations were made of the Common Law by sub-
sequent Statutes, as by 21 H. 8. the Coroner after the Con-
fession, and before the Abjuration, was to cause the Offend-
er to be marked with the Letter A on the Right Thumb.

In the next Year, the Parliament thought perpetual Ban- 22 H 8.
cap. 14.
ishment too great a Punishment for some Felonies; and
therefore it was enacted, That such Offenders should not
depart the Realm, but that they might go to some Sanctu-
ary which they themselves should choole, there to remain
during Life.

By this, and other Statutes, Abjuration was made so very
intricate, that the Parliament, *Anno 1 Jac.* repealed all these
Laws which were made concerning it, before 35 Eliz. and
afterwards, *Anno 21.* of his Reign, the Privilege of Sanctu-
ary and all its Dependencies were quite abolished. 21 Jac.
cap. 28.

But Abjuration by vertue of the Statute 35 Eliz. remain- H.P.C.228.
35 Eliz.c.2.
ed still, because it had no Dependence upon the Privilege of
Sanctuary; 'tis a Statute made wholly against Popish Recu-
sants convict above 16 Years of Age, enjoining them not to
remove above 5 Miles from their Habitation; if they do,
and not being Covert, nor having Land to the Value of
20 Marks *per Annum*, or Goods worth 40 *l.* they must abjure
the Kingdom before two Justices of Peace or Coroner;
which Abjuration must be certified by them to the next
Assizes, and 'tis Felony, without Benefit of Clergy, if they
do not depart within the Time limited by the Justices or
Coroner, or departing and returning again without the
King's Licence first obtained.

It is the Opinion of Mr. Lambard, that such Abjuration Lamb. 605.
must be made before two Justices at the Quarter-Sessions, and
entered on the Rolls of the Court by the Clerk of the Peace.

B

But

Accessaries.

But because at Common Law no Man could suffer perpetual Banishment but in Cases of Felony, therefore several Acts of Parliament have been made to inflict that Punishment upon other Offenders.

3 Ed. 3.
cap. 20.

As upon Trespassers in Parks and Ponds, if they cannot give Security by Recognizance to the King with two Sureties in 10 l. each, and the Party himself in 20 l. never to offend again in the like nature.

9 H. 3.
cap. 10.

Upon Deer-Killers, who, after an Imprisonment for a Year and a Day, cannot give the like Security.

35 Eliz.
cap. 1.

And likewise upon Persons who absent themselves from Church without just Cause, and refusing to conform within three Months after Conviction, and to make such Submission as required by the Statute, being demanded to do the same by a Justice of Peace.

This Act was put in Execution against a Protestant Dissenter, Dr. *Chancey*, a Physician of *Bristol*, who abjured the Realm in the Reign of King *James II.* but he was restored by a Special Pardon.

1 W. & M.
Sess. 1. c. 1.

But now those Penalties are taken away by the Statute 1 *Willielmi & Mariae*, upon taking the New Oaths, and subscribing the Declaration therein mentioned.

Accessaries.

Who are
Principals, and
in what
Cases,
and where
there are
no Accessaries.

Dalt. 353.
H.P.C. 215.
3 Inst. 59.
H.P.C. ib.
Dalt. 353.
4 Co. 44.

IN High-Treason, the Procurers before the Fact, or the Receiver of a Traitor afterwards, knowing him to be so, is a Principal.

In all other Felonies, and in forcible Entries, Riots and all Trespasses, the Aiders, Consenters or Abettors, if they are present at the Time when the Fact is committed, tho' 'tis Personal and done by one, yet these are all Principals; but if not present, then they are Accessaries before: So likewise if they be in the same House, tho' not in the View of the Felony.

But in Murder, there may be a Principal, tho' not present when the Fact is done, as where one knows Drink to be poisoned, and perswadeth another to drink, who drinketh, and dieth in the Absence of him who perswadeth it, yet it is Murder in him.

3 H. 7. c. 2.

The Procurers and Abettors in stealing of a Woman, and those who receive her, knowing her to be stolen, are all principal Felons.

Moor. 666.

So upon the Statute of 5 *Eliz.* of Forgery of Writings, all are Principals.

The

Accessaries.

3

The Presence or Absence of the Party, makes the Difference between the principal Offender and the Accessary before the Fact; for if he is present, then he is a Principal, if he Encourage, Advice or Abet; but if absent when the Thing is done, then he is Accessary before the Fact.

Accessaries before the fact.

Dalt. 354

If a Felony, of another Nature than what was advised, doth proceed from the Abetting or Encouragement given by any ill Man, he is likewise an Accessary to it; as if he adviseth one Man to rob another, and in stead thereof, he killeth him making Resistance: In this Case, the Abettor is accessary to the Murder, because his Advice was pursued to do an ill Act, which maketh him accessary to all the Consequences thereof.

Dalt. 354.

So 'tis if the Advice or Command was executed in another Manner, at another Time, or in any other Place than where commanded.

As if the Command is to rob in the Highway, and in stead thereof the Person is robbed in his House; or to poison a Man, and he stabs him; or to rob him one Day, and he doth it another Time; in all these Cases, he is Accessary before the Fact.

If a Man is in Confederacy with another to steal his own Goods, who stealeth them accordingly from his Servant with an Intent to charge the Servant, this maketh him an Accessary.

Goldf. 186.

And in all Felonies which are made so by Statutes, and which were not so at Common Law, there are Accessaries both before and after the Fact; the Abettors, Aiders, Concealers and Receivers, are not named in the Statute, excepting only in Felony, for carrying away a Woman against her Will, upon the Statute 3 H. 7. in which Case all are Principals.

3 Inst. 61, 62.

When the Felony commanded is executed upon another Person.

2 Inst. 183.

And if D. adviseth a Man to kill another by Poison, who knowing thereof delivereth it to another to eat, who eateth and dieth, this is Murder; but the first Adviser to Poison is not accessary to it.

Who are not Accessaries before the fact.

H.P.C. 217.

So where there is a Variance in the Nature of the Offence; as if I command a Man to rob another in the Highway, and he commits Burglary.

Lamb. 285.

H.P.C. ib.

So where one doth more than is commanded; as if I command a Man to apprehend another, and in stead thereof he robs him; for there must be an evil Purpose of Mind continuing, till the Act commanded be compleated to make a Man an Accessary before the Fact.

Lamb. 285.

There can be no Accessaries before the Fact in Case of Manslaughter, for it is an Offence which follows upon a sudden Affray, 4 Rep. 44.

Crpal of
Accessa-
ries.

Dalt. 359.

The Principal must always be named in the Indictment against an Accessary, and ought to be first attainted, otherwise the other Accessary cannot be tried, for by the Acquittal of the one, the other is discharged.

Dalt. 339.

If an erroneous Judgment be given against the Principal, yet the Accessary must be tried; but if the Principal die before Attainder, or is acquitted by Verdict, or if after Conviction he hath the Benefit of the Clergy, or is pardoned, or, if 'tis found by Verdict that he killed another *se defendendo*, or *per infortunium*, in all these Cases the Accessary is discharged.

Cro. Car.
567.

So 'tis if the Principal is burnt in the Hand, the Accessary is thereby acquitted.

By the Common Law, there could be no Accessary in one County to a Felony done in another, because those of a strange County could not upon the Trial have any Cognizance of the principal Offence; but this is now remedied by the Statute 2 & 3 Ed. 6. cap. 24. (*viz.*) That if a Felony is done in one County, and there are Accessaries in another, they may be indicted as Accessaries.

1 Annæ.

The Law seemed defective in this Matter, (*viz.*) That no Accessary could be convicted or suffer Punishment where the Principal was not attainted or had his Clergy, and by this Means the Contrivers of Felonies, and the Receivers of stolen Goods, often went unpunish'd; therefore a late Act was made, That if a Man is convicted of Felony, or stands mute, or challenges above twenty of the Jury, it shall be lawful to proceed against the Accessary, notwithstanding the Principal had his Clergy, was pardoned, or otherwise delivered before Attainder, and such Accessary shall suffer the same Punishment, if convicted, stands mute, or challengeth above twenty, as he should have suffered if the Principal had been attainted.

By this Act, he that *buys or receives* stolen Goods, knowing them to be stole, shall be prosecuted for a Misdemeanour, and fined and imprisoned, tho' the Principal is not convicted; and if he happen to be convicted afterwards, that Punishment shall exempt the Receiver, &c. from being again punished as an Accessary.

After the
Fact.

It was formerly held, that he was an Accessary after the Fact who received or aided a Felon, tho' he did not know any Felony was done, but then the Receiver must dwell in the same County where the Felon was outlawed; and the Reason was, because upon the Outlawry he is a Felon upon

Accessaries.

5

Record, and the Proceedings being in the County Court, all the Inhabitants of the County ought to take Notice of it; But this was thought too severe, and therefore now a more particular Knowledge of the Fact is required.

Those who willingly receive Felons, or relieve, assist, comfort, or aid them, knowing they have committed Felony, are Accessaries after the Fact.

*Who is
Accessary
after fact.*

The Fact to which the Party is an Accessary, must be Felony at the very Time in which he becomes an Accessary; and therefore the Receiver of one who gave a mortal Wound to another before the Death of the Party struck, is not an Accessary to the Murder, because it would not be Felony in the Receiver at the Time of the Stroke given, or the Man was then living.

He who buyeth stolen Goods for less Value than they are really worth, seems to consent to the Stealing; for by an under Value, it appeareth that the Seller did not come by such Goods honestly.

*In Goods
stole, and
bought af-
terwards.*

But Mr. *Dalton* makes a Difference in this Case, between a Buyer who is a Stranger, and one who is an Acquaintance of the Thief; for if a Stranger buy stolen Goods for near the Value, he is not punishable, but if a Companion of the Felon buy the Goods which he stole for less Value, this, he says, is by Covin, and makes him an Accessary after the Fact. Formerly to receive Goods stolen, knowing them to be stolen, did not make an Accessary, unless he did likewise receive the Thief.

But now by the Statute 3 & 4 W. & M. cap. 9. buying or receiving stolen Goods, knowing them to be stolen, makes an Accessary to the Felony after the Fact.

If the owner hath complained to a Justice of Peace, or to a Constable, or if the Felon be taken upon Hue-and-Cry, or otherwise, and then the Owner takes his Goods, or compounds with the Felon, or consents to his Escape; this makes him an Accessary after the Fact, because he did once set against the Offender *Criminaliter*.

*Re-taking
stolen
Goods
by the
Owner,*

But if in Pursuit he retaketh his Goods, and suffereth the Felon to escape before any Complaint made to the Justice, or without being charged, &c. this is a Misdemeanour, for which he may be fined, but it doth not make him an Accessary, because *in initio* he has Liberty *agere Civiliter vel Criminaliter*.

A Servant is so by relieving his Master, being a Felon, or by assisting him to escape; for he is bound to accuse him or to depart his Service, and so is the Master by relieving his Servant.

Husband receiving a Wife, knowing her to have done a Felony, *sed non a Converso*.

B 3

Those

Who are
not Ac-
cessaries
after the
Fact.

Those who receive a Man bailed for Felony.
Relieving a Felon in Prison.

To send Letters or Messengers in his Favour, to teach him to read, or to advise him that he endeavour to perswade the Witnesses not to appear against him at his Trial.

Not to reveal a Felony which I know is intended to be done, or suffering a Felon to escape, but giving him no Assistance.

Rules concerning Principal and Accessary.

EX vi termini, the Principal is to be tried before the Accessary, and therefore one *Cholmley*, Recorder of *Lincoln*, was turned out of his Office for trying the Accessary first.

Raym. 477. If the Principal is acquitted or convicted of Manlaughter, or in his own Defence, or is admitted to Clergy before Attainder, or is pardoned, or dieth, the Accessary is acquitted: But this must be before Attainder, for if afterwards, the Accessary shall be arraigned.

If the Principal doth not appear; or appearing, and stands mute, the Accessary cannot be tried: If he is not attainted, the Accessary shall not be outlawed: If a Man is indicted as Accessary to Two Principals, one of which happens to be convicted, and the other doth not appear; yet the Accessary shall be tried, and may be condemned if found Accessary to the Party convicted, and may again be arraigned as Accessary to the other when he appeareth.

If both Principal and Accessary plead to the same Felony, they may be tried by the same Jury; but Judgment must first be had against the Principal, and the Jury must be charged to acquit the Accessary, if they find the Principal not guilty.

9 Rep. 119. B. The Accessary, shall not take Advantage of any Error in the Attainder of the Principal.

Where a new Felony is made by Statute which was not so at Common Law, there may be Accessaries, though not named in the Statute.

Dalt. 358. In an Indictment against an Accessary, you must set forth the Manner of the Felony, and that the Defendant knowing him to have done such a Felony, *Felonice recepit, &c.*

If a Criminal is indicted as Principal, and acquitted, he cannot afterwards be indicted as Accessary *before that Fact*, because he who advises the Thing to be done, is in a Manner guilty of the Fact itself; and being acquitted of that, he is discharged of all Guilt before the principal Fact committed.

But notwithstanding such Acquittal, he may be indicted as Accessary *after the Fact*, because such an Accessary cannot be guilty of committing the Fact it self, for that was done before he knew any Thing of it. *Keeling 26.*

Indict.

Principals and Accessories

Indictment against an Accessary before the Fact.

JUR. &c. quod cum R. C. nuper de London Teoman, & J. J. nuper de London præd. Teoman, Deum præ oculis suis non habentes sed instigatione Diabolica seducti. 11 die Maii Anno Regni, &c. apud Lond. viz. in paroch. sancti Dunstani in occident. in warda de Far-ringdon extra, vi & armis, &c. Felonice ac ex malitiis suis præcogitatis in & super quendam Johan^m Turner, adtunc & ibidem in pace Dei & dicti Dom. Regis existent^r insultum & affragiam fecerunt & præd. R. C. quoddam tormentum (Angl. vocat^r a Pistol) valor^e quinq; solidorum adtunc & ibidem onerat. cum pulvere bombardico & glandine plumbea (Angl. charged with Gunpowder and Lead-Bullet) quod quidem tormentum idem R. C. in manu sua dextra adtunc & ibidem habuit & tenuit in & super præfat. J. T. adtunc & ibidem Felonice voluntarie & ex malitia sua præcogitata sagittavit & exoneravit (Angl. did shoot and discharge;) & præd. R. C. cum glandine plumbea præd. e torment. præd. adtunc & ibidem emiss. præfat. J. T. in & super. sinistram mamillam ipsius J. T. adtunc & ibidem Felonice percussit dans eidem J. T. adtunc & ibidem cum glandine plumbea præd. e torment. præd. adtunc & ibidem emiss. in & super sinistram partem pectoris ipsius J. T. unam plagam mortalem latitudinis dimid. unius pollicis & profunditatis quinq; pollicium de qua quidem plaga mortali præd. J. T. apud London præd. in parochia & warda præd. * instanter obiit & præd. J. J. Felonice & ex malitia sua præcogitata adtunc & ibidem fuit præsens auxilians assistens abettans confortans & manutens præfat. R. C. ad Felon. & Murdrum præd. in forma præd. Felonice faciend. & perpetrand. & sic præd. R. C. & J. J. præfat. Johan. Turner apud London præd. in paroch. & warda præd. modo & forma præd. Felonice voluntarie & ex malitiis suis præcogitatis interfecerunt & murdraverunt contra pacem dicti Domini Regis coron. & dignitat. suas, At qd. quidam Robertus Creighton nuper de Paroch. &c. Ars. Deum præ oculis suis non habens sed instigatione diabolica seducti. ante feloniam & murdrum præd. per præfat. Robertum Carliel & Jacobum Irwing modo & forma præd. facti. & perpetrati. viz. decimo die Maii Anno Regni, &c. præd. Robertum Carliel apud Paroch. præd. in Com. præd. ad feloniam & murdrum præd. modo & forma præd. faciend. & perpetrand. malitiose Felonice voluntarie & ex malitia sua præcogitata incitavit movit abettavit consuluit & procuravit contra pacem dicti Domini Regis nunc coronam & dignitatem suas.

Upon this Indictment, Robert Creighton Lord Sanchar was convicted, and executed in the Palace-Yard, in the Tenth Year of King James the First.

Upon all these Indictments of Accessories before and after the Fact, the Course is to set forth the Fact in the Indict-

Midd. ff

* If the Death is not immediately, then say, Languerat & languidus vixit useq; ad primum diem Junii, Anno, &c. quo quidem primo die Junii, Anno, &c. præd. J. T. de plaga mortali præd. obiit. The Accessary before.

Accessory
before the
fact.

ment, and conclude it, *contra pacem dicti Dom. Reg. coron. & dignitatem suas*; and then if the Indictment be against an Accessary before the Fact, you go and say, *Et quod quidam J. O. nuper de H. in Com. predict. Yeoman, 23 die Augusti, Anno, &c. ac diversis diebus & temporibus ante feloniam & murdrum (or as the Fact is) præd. in forma præd. fact. & perpetrat. apud H. præd. in Com. predict. malitiose & felonice consuluit mandavit procuravit incitavit & abettavit præd. (the Offender) ad præd. feloniam; & murdrum (or as the Fact is) voluntarie faciend. & perpetrand. contra pacem, &c.*

Accessa-
ries after
the fact.

If after the Fact, then the Form is thus, *viz.*
Quod J. O. de H. in Com. præd. Yeoman, post murdrum & feloniam præd. in forma præd. in fact sciens præd. (the Offender) feloniam & murdrum præd. in forma præd. fecisse & perpetrasse ipsum (the Offender) apud H. præd. in Com. præd. vicesimo quarto die Augusti, Anno Regni, &c. felonice receperat auxilium & confortavit contra pacem, &c.

Addition.

1 H. 5. c. 5.

BY the Statute of 1 H. 5. where Process of Outlawry lieth, the Condition and Dwelling of the Defendant must be inserted, or else the Outlawry is void.

Cro. Eliz.
148.

But if there is no proper Addition of either Mystery or Place in an Indictment for *Encroaching on a High-way*, 'tis good; because a *Distress*, and not Process of Outlawry, lieth in that Case.

But Surplusage of Addition doth no Hurt; the Omission is final by the Chancellor, at Discretion, upon those who make Original Writs.

This Statute doth not extend to Informations.

Additions are, either $\left\{ \begin{array}{l} \text{of Degree or Estate.} \\ \text{of Mystery or Trade.} \\ \text{of the Place of Abode.} \end{array} \right.$

Degrees of Estate :

Archbishop.	Doctor.	Marquess.
Archdeacon.	Duke.	Parson.
Alderman.	Earl.	Serjeant at Law.
Bishop.	Esquire.	Viscount.
Baron.	Gentleman.	Widow.
Dean.	Knight.	

Before

Addition.

Before the make of this Statute, the Name of Dignity even at Common Law was to be added, because it was Parcel of the Name.

Garret, King at Arms, was indicted for striking in the Churchyard; and because he was not so named in the Indictment, it was quashed.

Cro. Eliz.
224.

So an Appeal of Murder was brought against *William Oldcastle*, of B. &c. Yeoman, and *M. O.* his Wife, *Spinster*; the Woman pleaded, That at the Time of the Writ, &c. she was a *Gentlewoman*, &c. The Plaintiff replied, That was not a good Addition.

Dyer, 87. B.

An Indictment against *D. Viduam* is not a good Addition, and yet if 'tis against *A. the Wife*, 'tis good.

Godb. 59.
Cro. Eliz.
750.

Of Mystery or Trade.

As to this Matter, 'tis sufficient if the Addition is in *English*.

Sid. 101.

Broker.	Mercer.
Grocer.	Merchant.
Hostler.	Spinster.
Husbandman.	Taylor.
Labourer.	Waterman, &c.

Of the Place of Abode.

And this Addition must be as the Defendant then is.

1. If the Town and Parish are both of one Name, then the Addition of either is good. So likewise if there be Two Hamlets in the same Town.
2. If Two Towns are in the same Parish, then the Defendant must be named of the Town only.
3. If he is of a Place known within the Town, then he must be named of the Town.
4. The Addition of Place may be such whereof the Defendant was once; but the County, Town or Hamlet, whereof he is or was, must be set forth.

This Addition of Place must be in the first Part of the Indictment; for if 'tis after the *alias dictus*, 'tis not good. A Man was outlawed upon a Presentment before a Coroner, for not giving an Accompt what Goods he had in his Hands of a *felo de se*; and upon a Writ of Error to reverse it, the Objection was, That there was no Addition of Place or Mystery in the Presentment. But it was adjudged, That tho' the Statute relates only to Outlawry on Original Writs, in Personal Actions, and upon Appeals and Indictment, yet this Presentment shall be accounted in Law as an Indictment.

2 Leon.
183. Cro.
Eliz. 198,
583.
2 Leon. 200.

J. Gray.

Affray.

This is a Fighting between Two or more, and differs from an Assault; for the one is a Common Wrong, the other is an Injury done to a particular Person.

There must be a Stroke given or offered, or a Weapon drawn, or otherwise 'tis not an Affray, *H. P. C. 135.*

But yet a Challenge to fight by Word or Message, has been held an Affray; and *16 Car. 2.* one *Collins* was indicted for carrying a Challenge, knowing the Contents, and was found guilty, and fined 100*l.* and committed for a Month without Bail, *Cra. Sid. 186.*

'Tis to be considered upon this Head,	}	it may be done	}	1. By the Constable. 2. By a Justice of Peace. 3. By a private Person.
--	---	-----------------------	---	---

(1.) By the Constable.

He may command the Affrayers to depart, and upon Refusal, may commit them; if they resist, he may call others to his Assistance, and may justify the Wounding in such Case.

If 'tis a great and dangerous Affray, he may commit them till they find Sureties for the Peace.

If any Person is wounded, he may commit the Offender, or if he will he may carry him before a Justice, who may commit him, if he will not give Security to appear at the next Sessions.

He may take them out of a Franchise in the same County: He may pursue them into another County, but then when taken he must carry them before a Justice of Peace, for he cannot commit out of the County.

If he is assaulted doing his Duty, or if the Affray be in his Presence, he may put them into the Stocks till he can get Assistance to convey them to Gaol; or he may secure them, according to the Quality of the Offenders, till he can bring them before a Justice or to Prison, but not in his own House. *Dalt. 38. Lamb. 133.*

If he is hurt in the Affray, he may have an Action of Trespafs.

If there is threatening to kill, or beat, or hurt; tho' this is no Affray, yet he may apprehend the Persons, and carry them before a Justice: But where an Affray is over, he cannot apprehend any one without a Warrant from a Justice, unless some Person is dangerously wounded.

If

Affray.

If he neglect his Duty in not endeavouring to suppress an Affray, &c. 'tis presentable at Sessions, and he ought to be fined. *H. P. C. 135.*

(2.) What may be done by the Justice.

If the Affray is in his Presence, he may continue till they find Sureties.

If any Person is dangerously hurt, he may within a Year and a Day after the Hurting commits; and 'tis not Discretion to bail the Offender, tho' he may do it by Law.

He may, *ex Officio*, require those, who strike or threaten in his Presence, to find Sureties for their good Behaviour.

(3.) What may be done by a private Person.

Any Man may stay the Affrayers, who are about to assemble to break the Peace, till the Heat is over, and deliver them to a Constable.

Likewise any Man may apprehend an Offender who hath dangerously wounded another; and carry him before a Justice, or to Gaol. *H. P. C. 135. Dalt. 35.*

An Indictment for an Affray generally.

JUR. &c. *quod T. P. de H. in Com. Suffex. Taylor, & J. S. de eadem Faber Ferrarius, & J. O. de, &c. vi & armis, viz. gladiis tractis & aliis bellicosis instrumentis 23 die Augusti, Anno Regni, &c. modo Guerrino apud H. pred. in Com. praed. urrait. & illicite congregat. insultum & affrayam invicem fecerunt in terrorem & perturbationem diversorum subditorum dicti Domini Regis tunc ibidem existent. & in malum & perniciosum exemplum ligearum dicti Regis, & contra pacem dicti Domini Regis coron. & dignitat. suas.* Suffex ff.

An Indictment for an Affray, and beating another.

JUR. &c. *quod J. O. de, &c. & J. S. de, &c. vi & armis, Suffex ff.*
&c. 23 die Augusti, Anno Regni, &c. apud H. in Com. praed. ex malitia sua praecogitata in & super quendam R. D. de H. praed. in Com. praed. Teoman, in pace Dei & dicti Domini Regis tunc & ibidem existent. insultum & affrayam fecer. & ipsam R. D. cum quibusdam gladiis quos idem J. O. & J. S. in manibus suis dextris adtunc & ibidem separatim tenuer. super caput percusser. & dederunt eidem R. D. adtunc & ibidem diversas plagas quas ipsum in magno periculo vitae suae posuer. ita quod de vita ejus des. sperabatur in perniciosum exemplum aliorum Domini Regis subdito- rum ac contra pacem dicti Domini Regis coron. & dignitat. suas.

Ale-houses.

THE true Use of Ale-houses and Inns was for the Relief and Lodging of Travellers, and to supply the Wants of those who are not able to provide great Quantities of Drink and Provision; and if any Ale-house-keeper or Inn-keeper refuse to lodge a Traveller, the Justice of Peace may compel him to do it, or the Constable may present it as an Offence next Sessions, in order to suppress it, or the Party may have an Action on the Case; but they cannot be compelled to sell Victuals, unless the Traveller tender Money, if required.

At Common Law, it was lawful for any Person to build an Inn for the Reception of Travellers, and without Licence from the Justices; but if the Inn-keeper sold Ale by Retail to any Persons besides Travellers, and without a Licence, he was punishable. *Hutt. 99.*

As Ale-houses encreased, and were used to disorderly Purposes, so several Laws were made to suppress both the Numbers and Disorders.

{ 1. Licensing.
2. Disorders.
3. Officers.

These Laws generally concern

11 H. 7. ca. 2.

5 & 6 Ed. 6.
cap. 25.
Inns are
within this
Statute as
to Licen-
sing.

The first was made *Anno 11 H. 7.* by which Power is given to Two Justices to reject the selling Ale.

There was no farther Provision made in this Matter till about 56 Years afterwards, and then, *Anno 5 & 6 Ed. 6.* a Law was made, That no Man should keep an Ale-house without being licensed, either in Sessions, or by Two Justices, (*Quorum unus.*)

The Punishment was, Commitment for Three Days without Bail, not to be enlarged till the Offender entred into a Recognizance with Two Sureties not to keep an Ale house.

Which Recognizance being certified to the next Sessions, was to be a sufficient Conviction to fine him 20 s.

By this Statute, Power was given to the Sessions, or the Two Justices, to put down Ale-houses at Discretion, and to take Recognizances of Ale-house-keepers not to use unlawful Games, or keep Disorders in their Houses.

The Conviction upon this Statute ought to be by Way of Presentment or Indictment at the Sessions, and the Two Justices ought not to commit till Conviction.

Yet

Yet there are some Books which tell us, that an Indictment will not lie for keeping an Ale-house without a Licence, because this Statute directs in what Manner the Offender shall be punished, viz. by committing him. Palm. 388. 2 Rol. Rep. 398.

But because many Ale-house-keepers in those Days were not able to pay that Forfeiture, and it was seldom levied by reason of Poverty, which made People unwilling to present the Offenders; therefore a farther Punishment was added by the Statute 3 Car. which not only inflicts the Forfeiture of 20 s. to the Use of the Poor, to be levied by the Constable or Church-warden by Warrant of a Justice before whom the Offence was proved, and which Distress may be sold Three Days afterwards; but it provides, that if no Distress can be taken, the Justice shall deliver the Offender to the Constable to be whipped. 3 Car. c. 3.

This Statute appoints the Conviction to be by Confession, View of the Justice, or Oath of Two Witnesses.

For the Second Offence, committed to the House of Correction for 1 Month.

For the Third, not to be enlarged but by Order of Sessions.

That the Justice must not make a Warrant for less than 20 s.

That *Feme Couvert* keeping an Ale-house without Licence, her Husband may be punished.

And by a late Statute, Persons are prohibited to sell *Brandy*, or other distilled Liquors, or by Retail to be drank in their Houses, without a Licence, in the same Manner as common Ale-house-keepers are licensed, and the Offender is made subject to the same Rules, Penalties and Forfeitures, as those are who sell Drink without Licence. 12 & 13 Will.

By the Statute 1 Jac. Ale-house-keepers, &c. are prohibited to suffer Townsmen to sit Tippling, upon Forfeiture of 10 s. to the Poor where the Offence was committed, 1 Jac. c. 9. Constable or Church-warden may levy it by Distress, which may be sold after Six Days; and if that cannot be had, the Offender is to be committed till paid. Disorders in suffering Tippling and Tipplers.

A farther Punishment was added by 21 Jac. cap. 7. That the Offender should be disabled to keep an Ale-house within Three Years afterwards.

By 4 Jac. 5. Townsmen sitting Tippling, forfeit 3 s. 4 d. for the Use of the Poor, and being not able to pay it, shall be put in the Stocks Four Hours; the Punishment must be within Six Months.

Vintner keeping an Inn, and Inn-keeper, are within this Statute, per 1 Car. 14.

The

Ale-houses.

The Acts before mentioned relate only to Townsmen sitting Tippling.

But 21 Jac. cap. 7. any Person, be his Habitation where it will, is prohibited to sit Tippling; the Conviction by the former Laws was to be by Two Witnesses, but by this Statute one Witness, or the Confession of the Party shall be sufficient to prove the Breach of 1 Jac. 9. and 4 Jac. 5. and the Oath of the Party confessing shall be sufficient to convict any other offending at that Time; and a farther Punishment is added, viz. That the Offender shall be disabled to keep an Ale-house within Three Years afterwards.

Hutt. 99.
3 Co. 32.

Upon this last Statute it hath been held, That if an Ale-house be suppressed, and shall afterwards within Three Years be licensed by Two other Justices out of Sessions, the Two first Justices that suppressed it may do so again, and commit the Party for disobeying their Order.

The Statute 1 Jac. cap. 9. against suffering Tippling in their Houses, and may be bound in a Recognizance, and to keep good Order, or may be committed as Ale-house-keepers without Licence, or indicted at Sessions.

An Inn-keeper not qualified, cannot be suppressed but by Indictment for a common Nuisance at Sessions, and the Judgment must be to disable him to keep that very Inn; but it may be continued and kept as an Inn by another Person of good Repute. Hutt. 100.

For the better Direction of those who keep Ale-houses, King James, Anno 16. published these Articles by his Proclamation; the Substance whereof are, viz.

1. That the Justices meet once in a Year, either in April or May, and call before any Two of them (*Quorum unus*) such Persons who sell Ale, and inform themselves by Men of Credit what Persons are fit to keep Ale-houses, and then license them.

2. That in Licensing, they take a Recognizance with a Condition annexed (*ut postea*) and no other.

3. That the Person licensed do give such a Recognizance with Sureties, &c. for the Performance of the Condition to continue but for one Year, and when ever taken, to expire in April or May following, then to be renewed, if Justices think fit.

4. The Justices may call the Clerks of the Peace, Town-Clerks or Deputies, to attend them at their Meetings, to take Recognizances, &c. and enter them at Sessions, that the Queen may be entitled to the Forfeitures, and engross the Recognizance and Condition in Parchment, which is to be the Original, and give a Copy examined to the Ale-house-keeper.

Ale-houses.

19

5. They should keep a Book, in which the Names of all Ale-house-keepers should be kept, and they should attend the Justices with that Book.

6. They may take 18 d. for every Recognizance, and the Justice's Clerk 1 s.

7. If not licensed at the Meeting, he may have a Licence afterwards.

8. That none be licensed, who have not a convenient Lodging for a Traveller.

9. That Justices suffer none to sell, &c. without Licence, and that they proceed against Brewers at Quarter-Sessions for selling Beer or Ale to unlicensed Persons.

10. That the Clerks of the Peace in *Trinity-Term* every Year carry a Brief of all Recognizances into the Office of the Patentees, that there be no Concealment.

11. Justices in Sessions to enquire of the due Execution of these Articles.

In any open Place in the Town, but not in By-Streets, or far distant from a Town.

Places fit
for Ale-
houses.

For if built in any such Places, it may be presented, or indicted and suppressed, for 'tis a common Nuisance. So if the Inn-keeper or the House-keeper is a lewd Person, and if of ill Fame, his House may be suppressed.

Hutt. 100.

Persons of ill Fame and Conversation amongst their Neighbours, Constables, Bailiffs of Hundreds, and generally all Tradesmen who have good Trades, and sufficient for their Maintenance.

Persons
not fit to
keep Ale-
houses.

Ale-house-keeper convicted according to the Statute of 1 Jac. is disabled for Three Years.

Disabled
for a
Time.

Ale-house-keeper continuing drinking in another Ale-house in the same Town where he dwelleth, being seen by the Justice, or proved by Two Witnesses, or being drunk, and convicted upon an Indictment, or before the Justice.

Convicted and suppressed, if licensed again within Three Years, the Licence is void, and he may be punished as if he had no Licence; and so 'tis if he was convicted without being suppressed.

Officers neglecting to levy the Penalties upon 1 Jac. 9. or if no Distress can be taken, and they do not certify the same within Twenty Days, they forfeit 40 s. to the Use of the Poor, to be levied by Distress by Warrant of one Justice; and if that cannot be had, then to be committed till paid.

Neglected
by Of-
ficers.

The

The Conviction must be by One Witness upon Oath before one Justice.

Receiver of the Penalties shall be accomptable to the succeeding Officers.

4 Jac. 4.

Then as to selling Ale to an unlicens'd Ale-house-keeper, but only for the Expence of his own Family, the Forfeiture is 6 s. 8 d. per Barrel, to be divided between Poor and Prosecutor; the Poor's Moiety is to be delivered to the Church-wardens, &c. to distribute; Prosecution must be at Sessions.

By 3 Car. 30. Officers neglecting to execute a Warrant of the Justice for the 20 s. for selling Ale without Licence, or refusing to whip the Offender, if no Distress can be taken, forfeits 40 s. to the Poor, or to be committed without Bail.

11 & 12
Will.

Ale and Beer ought to be sold by the Ale Quart according to the Standard thereof, which is in the Custody of the Chamberlain of the Exchequer; but for several Years it hath been sold in *uncertain Measures*, and therefore by a late Act, 'tis Enacted, That it shall be sold by a full Ale Quart or Pint, according to the said Standard, and in a Vessel stamped or marked to be of the Content thereof, either from the Exchequer, from the City of London, or from some City or Market-Town, where an Ale Quart shall be made from the said Standard, and kept for that Purpose, under the Penalty of forfeiting, not exceeding 40 s. nor under 10 s. for every Offence.

If an Inn-keeper or Ale-house-keeper sells in a Vessel not stamp'd, or refuses in bringing in the Reckoning to give the particular Number of Quarts or Pints, he shall not detain any Goods if the Guest refuses to pay the Reckoning, but shall be left to his Action at Law.

The Collectors of the Excise must provide a full Ale Quart and Pint for every Market-Town within their respective Divisions, or forfeits 5 l.

The Chief Officer of such Town shall cause the Pots to be marked with W. R. and a Crown, for which he is to take One Farthing for each Vessel; if he neglect, or refuse so to do, he forfeits 5 l. and treble Damages shall be recovered by the Party grieved, and full Cost.

A Moiety of the Forfeiture goes to the Poor of the Parish where the Offence was committed, the other to the Prosecutor.

The Recovery is to be by Oath of one Witness before one or more Justices.

The Prosecution must be within Thirty Days after the Offence, and the Penalty is to be levied by a Warrant from the Justice by Distress, &c.

If an Action is brought for putting this Act in Execution, it must be laid in its proper County where the Fault was done, and not elsewhere; and if the Plaintiff is cast, he must pay Treble Cost.

The Justices must give this Act in Charge at every Sessions; but it shall not extend to Colleges or Halls in the Universities.

Warrant to levy 10s. for selling Ale in a Pot not marked.

To the Constable of, &c.

W Hereas T. P. of, &c. Inn-keeper, was on the Day of the Date hereof duly convicted before me for selling Ale in his House in the Parish of, &c. on the 22d Day of Febr. last, to J. O. of, &c. in a Vessel not made, sized, and equalled, according to the Standard for the Measure of Ale remaining in the Custody of the Chamberlain of Her Majesty's Exchequer, or in Proportion thereunto, nor signed, stamped or marked, to contain an Ale Quart according to the said Standard, by reason whereof he hath forfeited 10s. These are therefore to require you, to levy by Distress and Sale of the Goods of the said T. P. the afore-said Sum of 10s. and that you pay one Moiety thereof to the Church-wardens and Overseers of the Poor of the Parish of, &c. where the said Offence was committed, for the Use of the Poor thereof, and the other Moiety to T. M. who prosecuted for the same. Given under my Hand and Seal, &c.

Warrant against a Person for keeping an Ale-house without Licence.

W Hereas We whose Names are heretunto subscribed, Two of Her Majesty's Justices of the Peace for the County aforesaid, have been credibly informed, That T. P. of, &c. doth keep a common Ale-house without Licence, contrary to the Law in that Case made and provided: These are therefore to will and require you to bring the said T. P. before Us, or One of Us, or some other of Her Majesty's Justices of the Peace for this County, to be dealt withal according to Law. And hereof fail not. Given under our Hands and Seals, &c.

Two Justices, *Quorum unus.*

A Warrant for summoning two Witnesses against an Unlicensed Ale-house-keeper.

To the Constable of, &c.

By 3 Car.
c. 3. one or
more Ju-
stices, &c.
are to mi-
nister an
Oath to
two Wit-
nesses, &c.

Suffex ff. **W**Hereas Complaint hath been made unto me, That T. P. of, &c. doth of his own Authority, and without any lawful Licence, keep a common Ale-house, and doth sell Ale, Beer, &c. in the Parish aforesaid; and whereas I am credibly informed, That J. O. of, &c. and F. O. of, &c. can justify the same: These are therefore to require you to give Notice unto the said J. O. and F. O. to come before me, &c. upon, &c. by Ten of the Clock of the Forenoon of the same Day, then and there to testifie what they know concerning the Premises; whereof they are not to fail at their Perils. Given, &c.

A Warrant and Commitment, upon the Statute § Ed. 6. against an Ale-house-keeper discharged.

To the Constable of, &c. and to the Keeper of the Gaol for the said County, &c.

§ 6 Ed.
6. cap. 25.
Two Justi-
ces, one of
the Quo-
rum.

Suffex ff. **W**Hereas T. P. of, &c. hath been duly discharged from selling Ale or Beer in a common Ale-house, situate and being in the Parish of H. in the County aforesaid; notwithstanding which Discharge, he hath afterwards, contrary to the Commandment of the Justices of the Peace of the said County, used to sell Ale and Beer therein: These are therefore in Her Majesty's Name, to command you the said Constable of, &c. that you apprehend the said T. P. and him safely convey to the * common Gaol at H. aforesaid, and to deliver him to the Keeper thereof, together with this Warrant, commanding you the said Keeper to receive the Body of the said T. P. into your Custody, and him safely to keep by the Space of Three Days without Bail or Mainprize, and not discharge him afterwards, until he enter into a Recognizance with Two Sureties, according to the Form of the Statute in that Case made, that he will not keep any common Ale-house or Tippling-house, or use commonly selling of Ale and Beer. And hereof fail not. Given under our Hands and Seals, &c.

* If it be
for keep-
ing an Ale-
house
without
Licence,
then the
Form is,
viz.

Whereas
T. P. of, &c.
hath this
present Day
been law-

fully convicted, for that of his own Authority he did obstinately take upon him to keep a common Ale-house in, &c. without the Admittance or Allowance of Two Justices of the Peace for the County aforesaid.

The Form of the Recognizance.

Memorandum, quod 27 die Augusti. Anno Regni, &c. T. P. de, &c. & J. O. & F. O. de, &c. venerunt coram nobis R. B. & W. N. Justiciariis dictæ Domine Regine ad Pacem in com' prædict' conservand' assign' & recognoverunt se debere dictæ Domine Regine modo & forma sequen', viz. prædict' T. P. in viginti libris, & præfat' J. O. & F. O. uterque in decem libris legalis monete Angliæ de separabilibus bonis & catallis, terris & tementis suis respective levand' ad opus & usum dictæ Domine Regine hæred' & successorum suorum si defalt' fieret in performance conditionis infra scriptæ.

THE Condition of this Recognizance is such, That whereas the above-bounded T. P. hath been lawfully convicted before us R. B. and W. N. Two of Her Majesty's Justices of the Peace for the County aforesaid, for keeping of a common Ale-house in, &c. without being allowed thereunto in the open Sessions, or by Two Justices of the Peace for the said County; for which said Offence the aforesaid T. P. was by us committed to the common Gaol of the said County, there to remain for the Space of Three Days, pursuant to the Statute in that Case made and provided, and is now discharged from the said Imprisonment: If therefore the said T. P. shall not keep any common Ale-house, Tippling-house, or commonly sell Ale or Beer from thenceforth, without such Allowance as aforesaid, then this Recognizance to be void, or else, &c.

Nota, This Recognizance must be certified at the next Quarter-Sessions, which Certificate is by this Statute made to be a Conviction of the Party offending, and an Authority to the Justices in Sessions to assess 20*s.* as a Fine upon the Offender.

But this Law did not work the Reformation intended, because the Fine was seldom levied by reason of the Poverty of the Offenders; or if it was levied, the Person would sometimes run away, and leave a Charge upon the Parish, which was a Discouragement to the Prosecution.

Therefore by the Statute 3 Car. if they were not of Ability, a Corporal Punishment was added, and an easie Way of Conviction, viz. by one Justice out of Sessions, and a more speedy Remedy for the Fine.

A Warrant against an Ale-house-keeper without
Licence, upon the Statute of 3 Car. cap. 3.

To the Constable of, &c. and to the Church-wardens of, &c. in the
County aforesaid.

3 Car. 3.
The first
Conviction
either upon
View, Con-
fession, or
Oath of
two Wit-
nesses be-
fore one
Justice.

Suffex ss. **W**Hereas *T. P.* of, &c. Victualler, was this present
Day lawfully convicted before me for keeping
of a common Ale-house in the Parish of, &c. not being there-
unto lawfully licensed according to the Form of the Statute
in that Case made and provided, by reason whereof he hath
forfeited to the Poor of the said Parish the Sum of 20 s. of
lawful Money: These are therefore to require you, or one of
you, to levy the said Forfeiture by distraining the Goods and
Chattels of the said *T. P.* and that you detain the same for
the Use aforesaid: And in Default of Payment of the said
Sum of 20 s. within three Days after such Distress taken, that
then you appraise and sell the same to satisfy the said For-
feiture. And if the said *T. P.* shall not have sufficient Goods
upon which the said 20 s. may be levied, as aforesaid, or shall
not pay the same within six Days after the Date hereof, that
then you the said Constable do openly whip, or cause the
said *T. P.* to be whipped in the Parish * of, &c. for the said
Offence: And hereof fail not, &c.

*Where he
is taken, or
where Of-
fence done.

The Second Conviction.

WHereas, &c. (as in the former Warrant, to the Word
provided.) And whereas the said *T. P.* hath been once
lawfully convicted of the like Offence, and hath now offend-
ed the second Time: These are therefore to require you to
apprehend the said *T. P.* and him safely to convey to the
House of Correction, and to deliver him to the Keeper
thereof, together with this Warrant, commanding you the
said Keeper to receive the said *T. P.* into your Custody and
House, and him there safely to keep for the Space of one
Month, and to deal with him as an idle, lewd and disorder-
ly Person: And hereof fail not, &c.

The Third Conviction.

WHereas, &c. (as in the former Warrant, to the Word
provided.) And whereas the said *T. P.* hath been twice
lawfully convicted of the like Offence, and hath now again
the third Time offended: These are therefore to require you
to apprehend the said *T. P.* and to convey him to the House of
Correction, and to deliver him to the Keeper thereof, toge-
ther

Ale-houses.

21

ther with this Warrant, commanding you the said Keeper to receive the said T. P. into your Custody and House aforesaid, and him there safely to keep, until he shall be delivered from thence by the Order of the Justices in their General Quarter-sessions for the County aforesaid; and that, during all that Time, you deal with him as an idle, lewd and disorderly Person. And hereof fail not, &c.

A Warrant to suppress an Ale-house.

To the Constable of the Hundred of, &c.

Sheweth ff. **W**Hereas we are credibly informed upon the Complaint of several Persons, That T. P. of, &c. doth suffer rude and disorderly Persons to frequent his House in the Parish of, &c. being at this Time a common Ale-house, wherein they usually commit many great Disorders to the Disturbance of those who live near the said Place; for which Reason we R. B. and W. N. two of Her Majesty's Justices of the Peace for the said County, one whereof is of the *Quorum*, do think it convenient to discharge and put away the common selling of Ale and Beer, or other Liquors in the said House: These are therefore to require you forthwith to go to the said T. P. and to charge him from henceforth not to sell, or suffer to be sold, any Beer or Ale, or other Liquors in the said House; and that you also cause the Sign of the said House to be pulled down. And hereof fail not, &c.

Upon Proof, any Justice may bind him to his good Behaviour, and to appeal at sessions; and if he cannot find Sureties, then to commit him.

A Licence to keep an Ale-house.

Sheweth ff. **W**E whose Names are hereunto subscribed, being two of Her Majesty's Justices of the Peace for the said County, do, according to the Form of the Statute in that Case made and provided, admit and allow T. P. of, &c. Victualler, to keep a common Ale-house in that House where he now dwelleth, for and during the Space of one whole Year next ensuing the Date hereof, so as the said T. P. doth not use any unlawful Games during the said Time within the aforesaid House, and so as he keep good Order and Rule therein so long as it shall continue a common Ale-house as aforesaid. Given under our Hands and Seals, &c.

5 & 6 Ed. 6. cap. 25. Two Justices, *Quorum unus*, may discharge and remove where they think fit the common selling of Ale. If he continue to sell afterwards, 'tis a Contempt, and to appeal at

5 & 6 Ed. 6. cap. 25. Two Justices, *Quorum unus*.

The

The Recognizance and Condition upon licensing such Ale-house.

Suffex ff. Memorand, &c. as in the former Recognizance.

Principal
in 20^l. and
two Sure-
ties in 10^l.
each.
5 & 6 Ed. 6.
cap. 25.

THE Condition of this Recognizance is such, That whereas the above-bounden T. P. is allowed by the Justices above-named to keep a common Ale-house in the House wherein he now dwelleth, &c. If therefore the said T. P. shall not, during the Continuance of the said Allowance or Licence, suffer any unlawful Games to be used in his House, but shall, during the said Time, use and maintain good Order and Rule therein; then this Recognizance shall be void, or otherwise shall remain in full Force and Vertue.

A Warrant against an Ale-house-keeper for suffering Tippling in his House.

To the Constable of, &c. and to the Church-wardens of the Parish of, &c.

1 Jac. cap. 9.
21 Jac. c. 7.
1 Justice,
View, Con-
fession, or
Oath of
two Wit-
nesses, and
Prosecution
within six
Months;
but by 21
Jac. cap. 7.
one Wit-
ness is suf-
ficient.
1 Car. c. 4.
Vintners
are within
this Act,
and the Ale-house-keeper is disabled for three Years.

Suffex ff. **W**HEREAS it hath been duly proved before me this present Day, That T. P. of, &c. Victualler, did upon the 27th Day of August last past, permit and suffer J. S. and J. K. both of, &c. to remain and continue drinking and tippling in the Ale-house of the said T. P. in the Parish aforesaid, contrary to the Form of the Statutes in that Case made and provided: These are therefore to require you the said Constable or Church-wardens, to levy by Distress of the Goods and Chattels of the said T. P. the Sum of Ten Shillings for the said Offence, for the Use of the Poor of the said Parish, and to detain the said Goods for the Space of six Days next after such Distress taken, if the said Forfeiture of Ten Shillings shall not be paid to you within that Time; and that afterwards you appraise and sell the said Goods to satisfy the said Forfeiture, rendring the Surplusage to the Owner. And hereof fail not, &c.

A Warrant and Commitment for want of Distress.

To the Constable of, &c. and to the Keeper of the County Gaol there.

* One Wit-
ness.

Suffex ff. **W**HEREAS upon the 10th Day of this Instant August, it was duly proved before me, That T. P. of, &c. in the County aforesaid, Victualler, did upon the 10th

10th Day of July last past suffer J. S. and J. K. both of, &c. to remain and continue Drinking and Tippling in the Ale-house of the said T. P. in, &c. contrary to the Form of the Statute in that Case made and provided. And whereas on the said 10th Day of August I did, by my Warrant lawfully executed, require the Constables and Church-wardens of the said Parish of, &c. or some of them, to levy the Sum of Ten Shillings of lawful Money upon the Goods and Chattels of the said T. P. being forfeited by him, to the Use of the Poor of the said Parish, for the said Offence. And whereas I have been since credibly certified by, &c. Constable of, &c. That the said T. P. hath not sufficient Goods and Chattels upon which any Distress may be taken to satisfy the said Forfeiture: These are therefore in Her Majesty's Name, to command you the said Constable to take the said T. P. and to convey him safely to the Gaol aforesaid, and to deliver him there to the Keeper thereof, together with this Warrant, commanding you also the said Keeper safely to keep and detain the aforesaid T. P. in your Custody, until the said Ten Shillings shall be duly paid for the Use and Purpose aforesaid. Given under my Hand and Seal, &c.

A Warrant against a Tippler to levy the 3 s. 4 d. &c.

To the Constables and Church-wardens of the Parish of, &c.

Suffex ss. **W**Hereas it hath been duly proved before me, That T. P. of, &c. J. O. of, &c. and J. K. of, &c. being Inhabitants within your Parish of, &c. did on the 22d Day of this Instant August, remain and continue Drinking and Tippling in a * common Ale-house in, &c. by reason whereof they have each of them forfeited Three Shillings and Four Pence to the Use of the Poor of the said Parish. These are therefore to require you the aforesaid Constables or Church-wardens, or some or one of you, forthwith to levy by Distress and Sale of the respective Goods of the Persons above-named, the Sum of Three Shillings and Four Pence apiece, if they shall neglect or refuse to pay the same upon Demand; and in case of such Neglect or Refusal, and if no sufficient Distress can be found on which to levy the said respective Forfeitures, that then you, or some of you, set the said Offenders in the Stocks, there to remain by the Space of Four Hours; and for your so doing, this shall be your Warrant. Given under my Hand and Seal, &c.

4 Jac. 5.
21 Jac. 7.
One Witness.

* Inn or
Vintage-
ling-house,
as the Case
is.

Indictments.

THere has been some Doubt, whether an Indictment will lie upon the Stat. of 5 & 6 Ed. 6. for keeping of an Ale-house without the Allowance of Two Justices, because they

2 Roll. Rep.
398.
Palm. 388.

have an exprefs Power of committing before any formal Conviction, and have Authority to take Notice of the Offence, and to commit; and the Statute tells us how the Party shall be convicted after his Commitment, viz. by the two Justices certifying the Recognizance to the next Sessions, which he is obliged to give before his Enlargement. 4 Mod. 145.

This was the Opinion of Justice Haughton in *Michaelmas Term*, 21 Jac. but the later Opinions are, That where a Thing is prohibited by any Statute which is of a general Concern, and the Method of recovering the Penalties is in affirmative Words; that those shall not take away the general Way of proceeding by Indictment, unless it be by negative Words.

But a Man may be indicted for selling Ale in black Pots not marked, and tho' it doth not conclude *contra formam Statuti*, 'tis well enough; for selling less than Measure is an Offence at Common Law. 1 Vent. 13.

An Indictment for keeping of an Ale-house without Licence,

1 Sand. 248.
Syd. 409.

Villa & Burg. de Southwark in Com. Surr.

Memorand. quod ad General. Session. Pacis Domini Regis tent. apud le Courthouse super Montem Sancta Margarita infra Villam & Burgum de Southwark in Com. Surr. pro Villa & Burgo prædict. die Veneris scilicet octavo die Januarii, Anno Regni Domini nostri Caroli Secundi Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei defensoris, &c. vicesimo, coram Will. Turner Milite, Majore Civit. Lond. Ric. Brown Milite & Baronetto, Johan. Frederick Mil. & Thoma Bludworth Mil. Aldermannis dict. Civit. Justic. dicti Domini Regis ad pacem infra Burgum & Villam prædict. in Com. præd. conservand. necnon ad divers. felonias transgr. & alia malefacta infra Villam & Burgum præd. in Com. prædict. perpetrata, audiend. & terminand. assign. per sacrum. (of the Jury) proborum & legalium hominum Villa & Burgi prædict. in Com. præd. adtunc & ibid. jurat. & querat. ad inquirend. pro dicto Domino Rege, & pro corpore Civit. præd. existit presentat. quod Johannes Falkener de Parochia Sancti Salvatoris in Villa & Burgo de Southwark in Com. Surr. præd. Neoman. sexto die Decembris, Anno Regni Domini nostri Caroli Secundi Dei Gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Regis, Fidei defensoris, &c. vicesimo, & continue postea usq; diem captionis inquisitionis apud Paroch. præd. infra Villam & Burgum præd. in Com. præd. voluntarie obstinate, & sine ulla licentia admissione vel allocatione duorum Justiciar. dicti Domini Regis ad pacem infra Villam & Burgum præd. in Com. præd. conservand. assign. assumpsit super se custodire & custodivit unam communem popinam, (Anglice, a common Tippling-House) & in eadem popina ibid. per totum tempus supradict. communiter & publice vendidit & utteravit cer-vis. (Anglice, Ale) & al. potum diversis legiti & subditi dicti Domini Regis Jur.

* It should have been pro Villa & Burgo prædict.

* The Allowance may be likewise at the Sessions.

*prædict. ignot. contra formam statut. in hujusmodi casu
lit. & provif. ac contra pacem Domini Regis nunc coron. & dig-
nat. suas, &c.*

This Indictment was not thus concluded, (*viz.* contrary to
Form of the Statute) but it was concluded as an Offence
Common Law, *viz.* (*in contemptum dicti Domini Regis nunc
coron. & suarum ac contra pacem*) and it being no Offence at
Common Law to keep an Ale-house without Licence, it was
that Reason quashed.

Inns were allowed for the Benefit of Travellers, who have
certain Privileges whilst they are in their Journeys, and are in
more peculiar Manner protected by the Law; 'tis for this
Reason that the Inn-keeper shall answer for those Things
which are stolen *infra Hospitium*, tho' not delivered to him to
keep, and tho' he was not acquainted that the Guest brought
his Goods to the Inn, for it shall be intended to be through
his Negligence, or occasioned by the Fault of him or his
servants.

8 Rep. Ca-
ley's Case.

So if he puts a Horse to Pasture without the Direction of
the Guest, and the Horse is stolen, he must make Satis-
faction.

But if a Neighbour, who is not a Traveller, lodges in an
Inn and loseth his Goods, or if the Guest is robbed by his
own Servant in the Inn, or by any one who came thither
with him, or by leaving his Goods in one Room, when the
Inn-keeper desired him to leave them in another, in such
Cases he shall not be answerable.

An Indictment upon the Statute of 4 Jacob. cap. 5. for
Tippling, &c.

*Index ff. Jur. &c. quod T. P. de Parochia de, &c. Yeoman, 28 die
Augusti, Anno Regni, &c. remanebat & continuabat
in domo & potens in hospicio J. T. infra Parochiam præd. in Com.
præd. non existens, ad tunc, &c. contra formam Statut. in hujusmodi
casu edit. & provif. & contra pacem dicti Dom. Reg. coron. & dig-
nat. suas, &c.*

For keeping of a disorderly House.

*Index ff. Jur. &c. quod T. P. de, &c. Victualler, est homo male
conversacionis & Gubernacionis & pacis Dom. Reg. per-
noscitur, & quod idem T. P. apud H. in Com. præd. 29 die Au-
gusti, Anno, &c. custodiebat tenebat & occupabat quandam popinam
communem (Anglice, a common Tippling house) & præd. 29 die
Augusti, Anno, &c. necnon diversis diebus & noctibus tam antea
quam postea apud H. præd. in Com. præd. in eadem popina diversos
homines male conversacionis & suspecti. ibidem bibentes jurantes &
ludentes*

ludentes ad illicites ludos, viz. pñtis chartis & aleis, (Anglice, Cards and Dice) omnibus horis tam noctis quam diei recepit & hospitat. est per qua vicini sui & alii ligei populi dicti Dom' Reg' ibidem multipliciter vexantur inquietantur & gravantur in malum exemplum aliorum dicti Dom' Regin' subditorum & contra formam Status in hujusmodi casu editi & provis' & contra pacem dicti Dom' Regin' nunc coron' & dignitas suas, &c.

Apothecaries, See Juries.

Appeals.

34 Ed. 3.
c. 2. 2 Inst.
420. H. P.
cap. 179.

THo' nothing can be said under this Head which relates to the Office of a Justice of Peace, yet some Knowledge of the Law in this Matter may be requisite to him. Appeals may be brought either by Writ or Bill. It was the Opinion of Justice *Fitzherbert*, That the Justices of Peace might receive an Appeal by Bill, because by the Statute they had Power to hear and determine Felonies; but that is at the Suit of the King, and not of the Party: And yet this is made *Quare* by my Lord *Hales*, in his Pleas of the Crown.

Appeals are of Three Sorts, viz.

1. By the Heir-male, for the Death of his Ancestor.
2. By the Wife, for the Death of her Husband.
3. By the Appellants, for Wrong done to themselves, as Robbery, &c.

These Appeals are not so common as Indictments, because the Prosecution is not only more chargeable, but 'tis the most nice Suit in the Law, for the Omission of any Word which is material will abate the Writ.

1 And. 41.
See in Murder.

As for Example: By the Statute 24 H. 8. cap. 5. 'tis enacted, That if a Person is appealed for the Death of another, attempting to Murder the Appellee, and 'tis so found by Verdict, he shall forfeit neither Lands or Goods; the Jury found that the Person slain assaulted the Appellee near the High-way, but omitted to say, *Ad ipsum murdrandum*, and that he kill'd him in his own Defence; and because these Words were left out, the Appellee had Judgment to forfeit his Goods.

Cro. Eliz.
196.

So by *mistaking the Place*, as if the Wound is alledged to be given at *W.* of which he languished at *L.* and there died, and so at *W.* aforesaid the Appellee *modo & forma*, the other *murdravit*; this is ill, because 'tis set forth that the Man died at *L.* and yet the Murder is alledged to be at *W.* which is very inconsistent, for 'tis not Felony till his Death.

So

Appeals.

27

So where two were indicted as *Principal*, and a Man and his Wife as *Accessaries* to a Murder, and all found guilty, and the Principals and the Husband executed, and the Wife pardoned; it was a Question whether an Appeal brought against her should abate, because there was no *Principal* named in it, nor was there any living. Dyer 133. a.

Where 'tis brought by a Brother and Heir, it shall abate if he is so named after the *alias dictus*, and not in the Substance of the Writ. Dyer 50. b.

The Process of *Capias* must be awarded the same Day of the Return of the Writ of Appeal, and it will be a Discontinuance if dated but a Day afterwards, and aided by no Statute, nor by the Appearance of the Party himself. 2 Cro. 283.
Yelv. 204.
1 Bullt. 141.

This varies from all other Proceedings, for a Fault in it can never be amended; and though regularly after a Non-suit you may bring the like Action again, yet a Non-suit in any Appeal for Felony (but it must be after Appearance in proper Person, *Sid.* 32.) is peremptory, because 'tis in *factum vitæ*. 1 Inst. 139.
Yet the
Party may
be afterwards
indicted.
Cro. Eliz.
460.

Now as to Appeals in Murder, 'tis to be observed, that if there is a nearer Heir to the Person killed, the next Heir-male cannot bring an Appeal; as if he that was killed had only a Daughter, his Brother shall not have an Appeal.

The Count in an Appeal must contain,

The Fact.	{	As to the Fact,	1. In what Part of the Body.
The Year.		four Things are necessary;	2. Of what Length and Depth. 3. That he died of the Wound. 4. Within the Year and a Day.

The Day. Not necessary in an Indictment.

The Hour. It may be *circa 10 Horam ante Meridiem*.

The Year of the King. That the Fact may appear to be done within the Year. Circiter
pettus, not
good in an
Appeal.

The Vill where it was done.

And with what Weapon.

Some Questions have been made *where* 'tis proper to bring an Appeal; as for Instance: If the Principals are attainted in *Wiltshire*, and an Appeal is brought in the same County against the Accessaries, setting forth, That they *apud London* did incite, abet, &c. the Principals: This Appeal is not well brought in *Wiltshire*, because the procuring and inciting was a Personal Tort done in *London*, and the Appeal ought to have been brought there. Dyer 38. a.

And as the *Place*, so likewise the *Time* when to be brought, is material; and as to that, there is some Difference in the Crimes; for if 'tis an Appeal for Murder, it must be brought within 4 Leon. 16.

within the Year and a Day after the Fact; if for Robbery, it may be twenty Years after.

So likewise it hath been a Question, where a Man is indicted for Murder and convicted of Manslaughter, and an Appeal brought, Whether the Court may proceed upon such Conviction, pending the Appeal?

And as to this Matter, a late Case happen'd, in which the Law is now settled, and it was thus:

Mr. *Lisle* was indicted at the Assizes held at *Carlisle* for the Murder of one *Armstrong*, and was found guilty of Manslaughter; an Appeal was immediately brought, which was receiv'd, but before it was arraign'd he pray'd his Clergy: Then the Appeal was read in Court, to which *Lisle* appearing, did not plead to it, but desired to be bailed; which not being granted, he was remanded to Prison.

Afterwards these Proceedings were returned by *Certiorari* into *B. R.* and the Appellee being brought up by *Habeas Corpus*, was committed to the *Marshalsea*: And at another Day appearing in Court,

(1.) The first Question was, Whether he might be bailed before he had his Clergy? And it was adjudged, that he might.

(2.) The next Question was, Whether the Court might proceed to Judgment upon the Conviction of Manslaughter, though there was an Appeal then depending? And adjudg'd likewise, that they might, because neither the Appellant or Appellee had any Day in Court; for the Appeal being commenced at the Assizes, was determin'd with that Session, and cannot be continued from one Gaol-Delivery to another.

'Tis true, 'tis not wholly discontinued, for it being removed into *B. R.* and the Appellee being in *Custodia Mareschali*, he may move the Court that he may be arraign'd; or if he was not in Custody, then the Appellant might take out Process against him: But he cannot proceed upon an Appeal thus commenced, unless 'tis reviv'd; which not being done, the Court may proceed to Judgment.

In former Times, there could be no Proceeding on an Indictment for Murder till the Year and a Day was expired, in which Time the Party might bring an Appeal; but it seems this was not *ex Provisione Legis*, but at the Discretion of the Justices, who apprehended that the Person most nearly related would be most zealous in prosecuting the Criminal, in order to revenge the Injury, notwithstanding any Pardon which he might obtain upon a Conviction on an Indictment, which he could not do on an Appeal.

'Tis agreed, that if an Offender was indicted, and at the same and before the same Judge an Appeal was freshly pro-

ated, the Appeal ought to be preferred; because if it was for a Robbery, the Appellant might have Restitution, which he could not have upon an Indictment, before the Statute of Hen. 8. and if it was for a Murder, no Pardon could prevent the Punishment.

But then, by the Common Law, the Appeal must be *freshly sued*; 'tis true, 'tis very uncertain what is the legal Sense of a *fresh Suit*, though we are told, that upon great Consideration of all the Books, 'tis settled but in a very odd Manner, (*viz.*) That 'tis not capable of any Definition, but must be determin'd by the Discretion of the Court.

Now 'tis generally known, that some Men can discern between and farther than others; so that the Matter being left at this Uncertainty, and because the Defendant might not take any Advantage by pleading in Abatement to the Appeal, that there was no *fresh Suit* prosecuted, 'tis probably that might be the Occasion of making the Statute of *Glocester, cap. 9.* by which 'tis enacted, That no Default shall be in the Appellant, so as he brings his Appeal within a Year.

So that upon the whole Matter it appears, that there ought to be no Delay in prosecuting an Appeal; and because it often happened otherwise, and sometimes Appeals were brought in Purpose to hinder the Prosecution upon the Indictment, sometimes an Agreement was made with the Appellant, so that at the End of the Year all was forgotten: Therefore by the Statute 3 Hen. 7. cap. 1. an Indictment may be tried without staying for the Appeal. But notwithstanding the Proceedings on such Indictment, and any Attainder or Acquittal therein, the Benefit of the Appeal is saved to the Party, if the Benefit of the Clergy was not had; which shews, that before that Statute, if the Clergy was had, it would be a good Bar to the Appeal: So 'tis unreasonable that the Appeal should interpose between the Conviction and the Judgment, to hinder Execution; for if that should be admitted, then an Appeal might obstruct even upon a Conviction of Murder, as well as of Manslaughter.

Afterwards, Mr. *Lisse* being willing to be discharged from this Appeal, he brought a *Sci' fa.* against the Appellant to compel him to prosecute it; who appearing, Mr. *Lisse* pleaded the Indictment and Conviction of Manslaughter, and that no Judgment was given thereon; and that at the Time of the Conviction, he was, and yet is a Clerk, and pray'd his Clergy at that Time, and offer'd to read as a Clerk, if the Court would have admitted him: And that afterwards, being demanded by the Court why Judgment should not pass against him, he pray'd his Clergy; which was allowed, and that he read as a Clerk, and was burnt, &c. And as to the Felony and Murder, he pleaded Not guilty, to which there was a tri-

a trifling Replication, and to that a Demurrer. But the Plea was held good to bar the Appeal.

In what
County it
must be
brought.
Cro. Car.
247.
By the
Wife.
2 Inst. 68.
Jones 255.

If a Stroke be in one County, and Death in another, the Appeal may be brought in the County where the Man died; This was a Doubt at Common Law, but remedied by the Statute of 2 & 3 Ed. 6. But it was never yet doubted whether a Fact in one County might be tried in another, for 'tis plain it cannot, and therefore an Appeal of Murder committed in *Montgomery* was tried by a Jury in *Shropshire*, and for this Cause it was held ill.

'Tis true, the Statute 26 H. 8. cap. 6. allows, that a Man may be indicted in one County for a Fact committed in another, but it doth not mention Appeals.

At Common Law, a Woman might have an Appeal for the Death of her Ancestor; but by *Magna Charta* 'tis enacted, *Quid nullus capiatur aut imprisonetur propter appellum femine de morte alterius quam viri sui*; and therefore *ne unques accouple, &c.* is a good Plea in Bar to such an Appeal: Yet if the Person slain had no Heir of his Father's Side, his Uncle of the Mother's Side might have an Appeal, and in such Case he must of Necessity make his Conveyance by a Woman.

She must continue to be *femina viri sui*, for if she marry before, or pending the Appeal, 'tis gone; if after Judgment in an Appeal, she cannot have Execution.

Appeal of
Robbery.
3 Inst. 242.

She might have an Appeal of Robbery, for that is a Wrong done to her self.

At the Common Law, this Appeal was the only Way for the Party robbed to have Restitution of the Goods taken from him, for he could not have them restored upon an Attainder on an Indictment, because that was at the Suit of the King.

And even in this Case the Law was very defective; for if a Robbery was committed by one Man upon three, and they all bring several Appeals against him, and he is attainted and executed at the Suit of one of the Appellants, the other two cannot be restored to their Goods, because 'tis impossible that the Robber can now be attainted at their Suit: And this was the Occasion of making the Stat. of 21 H. 8. to Remedy that Defect, *viz.* That the Robber being found guilty, the Justices have Power to award Restitution of the Goods taken away, as if the Felon was attainted at the Suit of the Party in an Appeal within a Year and a Day after the Death or Fact, the Year to be accounted according to the Calendar Months, and till that was expired the King could not bring an Indictment; but yet if an Appeal is brought for Murder, &c. and pending the Suit, and after the Year expired one becomes Accessary, &c. the Party may have an Appeal against

Sram. 167. b.
21 H. 8.
cap. 11.
When it
must be
brought.
2 Inst. 320.

against the Accessary after the Year wherein the Death happened, but it must be within the Year wherein the new Felony (as Accessary) was committed.

They must all be joined in an Appeal, and yet if the Principal be pardoned before Judgment, or hath his Clergy, the Accessary cannot be tried, because before Judgment given doth not judicially appear that there was any Principal, where there is no Principal, there cannot be an Accessary; but if the Principal be pardoned after Attainder, 'tis otherwise.

Principals and Accessaries.
4 Rep. 43. B.
Moor 461.
Cro. El.
540.

If an Appeal of Felony is against Principal and Accessary, both plead the general Issue, and the Principal is acquitted upon his Trial, this is likewise an Acquittal in Law of the Accessary, and he shall have Damages against the Appellants. But in an Appeal as Accessary to two Principals, where one of them is acquitted, the Appellee shall not have Damages till the other is also acquitted.

If an Appeal of Murder is brought against one, *simul* five other Persons as Principals, and 'tis found that the one did the Fact in his own Defence, this is an Acquittal of all; but yet that one cannot have Damages.

If an Appeal is brought after an Indictment found, it cannot be said malicious, because it may be reasonably intended that the Indictment thus found was the Cause of the Appeal. But if the Indictment should prove insufficient, then 'tis Judgment of Law as no Indictment, and an Appeal afterwards brought may be malicious.

Malicious Appeals.

A Release of all Actions Real and Personal will not discharge an Appeal of Felony, because 'tis an Action of a different Nature, and doth not fall under the Notion of a Personality; 'tis a Criminal Action, and must be released by the Word *Appeal*, or by other general Words, *viz.* all Actions Criminal or Mortal, &c.

Releases therein.

But a Release of all Personal Actions is a good Bar to an Appeal of *Maihem*, because Damages are only to be recovered therein.

An Attorney cannot be made in this Appeal, because the Defendant hath a Right by Law to demand *Oyer* of the *Maihem*; and though a Man may be so wounded that he cannot appear in Person, yet that must not change the Law.

Appeal of *Maihem*.
2 Inst. 313.
2 Inst. 316.

Upon Not guilty pleaded, the Appellee cannot give in Evidence that he did it in his own Defence, but he ought to plead it specially by Way of Justification.

Pleas in Appeal.

'Tis

4 Rep. 43.

'Tis a good Bar to plead a Recovery in Trespass, &c. and to aver that the wounding in the Appeal of *Maihem*, and the *Maihem* in the Trespass, were all one.

Sid. 108.

Hard. 408.

But this Appeal is seldom brought; the usual Way is an Action of Trespass for an Assault, Battery and Maiming, &c. and in this Action the Court may encrease the Damages upon the View of the *Maihem* and Affidavits of the Expences, but then the Word *Maihemavit* must be in the Declaration, or the particular Manner of the *Maihem* must be expressed, which is the better Way of declaring, for otherwise the Court cannot encrease the Damages, unless the Judge, before whom it was tried, will certify the Particulars; but he must be a Judge of the same Court.

Dyer 348. B.

3 Leon.

268. Cro.

Eliz. 223,

224.

Misnomer is good Plea in an Appeal.

A Woman brought an Appeal for the Death of her Husband; the Appellee pleaded, That she was never married, and pleaded over to the Felony and Murder, Not Guilty; the Woman replied, That she was lawfully married, but did not reply to the Felony: And this was adjudged no Discontinuance, because the first Part of the Plea was not triable at Common Law, for if it had, she must have replied to both Parts.

4 Rep. 45. b.

Cro. Eliz.

276, 296.

In an Appeal of Murder, the Jury may find the Defendant guilty of *Manlaughter*, or not, as they shall see Cause; but if they find him guilty of *Manlaughter*, that shall be as a good Plea to an Indictment for the same Murder, viz. That in the Appeal he was found not guilty of Murder, but guilty of *Manlaughter*.

Yelv. 12.

If a Murder is committed in one of the *Cinque-Ports*, and the Appeal is brought in *Kent*, 'tis no good Plea to say the Murder was done in *Sandwich*, *ubi breve Domini Regis non currit*, because those Privileges which they have are for their Ease and Benefit. Now 'tis plain they have no Power over one out of their Jurisdiction; so that if a Murder is committed in *Sandwich*, and the Offender escapes into *Kent*, which he easily may, those of the *Cinque-Port* cannot try him for want of Jurisdiction; and if he should not be tried by the Court of B. R. because the Murder was done there, then the Murderer must go unpunish'd, which is such an Absurdity as the Law will not endure.

Pardon in
Appeal.

*Cro. Eliz.

276.

†Cro. Eliz.

464.

In an Appeal for Murder, the Jury may find the Appellee not guilty generally, as they did in * *Wrote and Wiggs* Case; or they may find him not guilty of Murder, and guilty of *Manlaughter*, as they did in the Case of † *Penryn and Corbett*; tho' such a Finding is more than needful, and therefore it seems to be no good Bar to an Indictment afterwards for the same Fact.

It

It has been a Doubt, whether upon such a Verdict and Clergy allowed, the King can pardon the Burning in the Hand; it was made a *Quere in Dyer*, Anno 9 Eliz. in *Musgrave's Case*. Dyer 261. a.

About 29 Years afterwards the same Matter came in *Question* again, and the aforesaid Case between *Penryn* and *Corbett*; and the Argument then used why the King could not pardon it, was, Because it was at the Suit of the Party, tho' it was not denied but the Fact of which the Appellee was found guilty, was for the King; and my Lord Chief Justice *Popham*, who had seen the Roll in *Musgrave's Case*, cited that for an Authority, that the Queen could not pardon it: But that Cause was ended by Composition. Cro. Eliz. 464.

Three Years afterwards this very Question came in debate again between *Shuckborough* and *Biggin*, upon the Appeal of the Wife for the Death of her Husband; the Pleadings are enter'd at large in my Lord *Coke's Entries*, fol. 57. but no Judgment, for that Case was likewise ended by Composition, the Court being equally divided. Cro. Eliz. 632, 682. Moor 571. Latch. 126.

But my Lord *Coke*, who has reported the last mentioned Case, tell us, That upon Conference had with other Judges, Judgment was given, That the Queen might pardon the Burning in an Appeal; and the Reason he gives is, Because 'tis no Part of the Judgment or Punishment, but only a Mark to signify that he shall not have his Clergy again; and this was likewise the Opinion of my Lord *Hobert*, in his Argument between *Searl* and *Willains*: So that this Point is now settled. 5 Rep. 50. Hob. 294.

The *Teste* of the *Capias* must bear Date the same Day with the Return of the Writ of Appeal, and so every new Process must be dated on that very Day the other was determined, for the Intermission of a Day will make a Discontinuance, because by Law the Appellant must prosecute the Defendant *resenter & instanter*, so that the Appeal must be pursued *de die in diem*. Protesis in Appeal.

If there are several Defendants, and all outlawed, and then all of them join in a Writ of Error, and one alone appears, the Outlawry shall not be reversed, although there is a plain and manifest Error in the Proceedings, without the Appearance of all; nor then neither, until a *Scire facias* issued to the Lords mediate and immediate.

The Defendants cannot imparle, but the Count may be adjourned by a *Dies datus* until such a Day, and when they appear, and Issue is joined, the Appellant must pray a *Venire Facias* immediately.

If the Appeal is removed by *Certiorari*, and the Plaintiff will not proceed, the Defendant may have a *Scire Facias*, and upon *Nihil* returned, or a *Scire feci* and Default, the Defendant is discharged. D. Evis.

Apples and Pears.

Evidence given for or against the Defendant in an *Indictment* is no Evidence in an *Appeal*, and therefore the Court would not suffer the Witnesses for the Appellee to depose what was given in Evidence upon an Indictment by a Witness then dead; but this was contrary to the Opinion of Justice *Twissden*.

By the ancient *Saxon* Laws, when a Man was killed, the Offender was to make some Compensation in Money to the Relations of the Person killed, according to his Quality; and this was called *Weregeld*, which the King could not Pardon: From whence 'tis the Opinion of some Men, that Appeals in Cases of Murder are derived to the Wife or Heir at this Day. And so much I thought necessary to write concerning Appeals.

Apples and Pears.

IF sold by Water-measure, it shall be round, and 18 Inches and an half Diameter within the Hoop, and Eight Inches deep and no more; and so in Proportion for a greater or lesser Measure, and heaped.

He that buys or sells by other Measure, forfeits for every Offence 10 s. one Half to the Informer, and the other to the Poor of the Parish where the Offence is committed.

Conviction must be by the Oath of one Witness, before one Justice, Mayor, &c. and the Penalty is to be levied by a Warrant.

The Form of the Warrant :

To the Constable and Headborough of the Hundred of, &c.

Middlesex. **W**Hereas *T. P.* hath been duly convicted before *me* for selling Apples at *L.* on 22d Day of *January* last past, in a Measure not round, nor 18 Inches and an half Diameter within the Hoop, nor Eight Inches deep, neither were the said Apples heaped in the Measure out of which they were sold, so that he hath forfeited 10 s. These are therefore to require you forthwith to levy the said 10 s. on the Goods and Chateles of the said *T. P.* by Distress and Sale thereof, rendring to him the Overplus, and that you pay a Moiety thereof to *J. O.* who first informed me of the said Sale, and the other Moiety to the Church-wardens and Overseers of the Poor of the said Parish of *L.* where the said Offence was committed, for the Use of the Poor thereof. And hereof fail not. Given under my Hand and Seal, &c.

Apprent.

Apprentices.

THE Statutes relating to Apprentices, Labourers, Masters and Servants, may be thus reduced, *viz.*

Of these, there are three Sorts :

Apprentices, {	To Trades.	} 5 Eliz. cap 4.
	To Husbandry.	
	Poor Apprentices.	

Concerning Apprentices to Trades, these Things may be observed upon the Statute 5 Eliz. cap. 4.

Appren-
tices to
Trades.

- | | |
|----------------------------------|--|
| Appren-
tices to
Trades. { | 1. Who may take them, who not. |
| | 2. Who shall be compelled to serve in Trades. |
| | 3. The Manner of punishing or discharging Apprentices. |
| | 4. How long they must serve. |

1. And First, who may take Apprentices, *viz.*

Every House-keeper in any City or Town-Corporate, of the Age of 24 Years, and using any Art or Mystery there, may take an Apprentice, whole Term ought not to expire till he is 24 Years old.

Artificers in Market-Towns not Corporate, and who are Housholders, and of the Age of 24 Years, may take other Artificers Children Apprentices.

These Tradesmen following may take Apprentices, tho' the Parents of such Apprentices have no Lands, *viz.*

Bricklayers.	Linen-Weavers.	Smiths.
Brickmakers.	Masons rough.	Shinglers.
Carpenters.	Millwrights.	Thatchers.
Coopers.	Millers.	Tilers.
Earthen Potters.	Plasterers	Tilemakers.
Fullers.	Plowrights.	Turners.
Heliors.	Sawyers.	Woollen-Weavers.
Lime-burners.	Slaters	Wood-burners.

Who may not take them, *viz.*

These Tradesmen following shall not take Apprentices, but their own Children, or the Children of such whose Parents have 40 s. *per Annum*, if they live in Corporate-Towns; or 3 l. *per Annum* in Lands, if they live in Market-Towns not Corporate; the Ability of the Parents is to be certified under the Hands and Seals of three Justices where the Land lieth, to the Head Officer of the Place.

Apprentices.

Clothiers dwelling in Corporate Towns:

Drapers.	Goldsmiths.	Mercers.
Embroiderers.	Ironmongers.	Merchants.

8 Eliz. c. 2.

And by a subsequent Statute, a Hatmaker is not to have above two Apprentices at one Time, upon Pain of being committed for a Month.

Woollen-Cloth-Weavers (except those who live in *Cumberland, Lancaster, Wales, Westmorland*, or in Cities, Corporations or Market-Towns) shall not take Apprentices, but their own Children; nor teach their Art to any, but to those whose Parents have a Freehold of 3 *l. per Annum*, and to be certified, &c. under the Hands and Seals of three Justices where the Land lieth: The Forfeiture is 20 *s. per Month*. This is repealed 5 & 6 Will. & Maria, cap. 3.

Clothworker,	Sheerman,	Taylor,
Fuller,	Shoemaker,	Weaver,

Having three Apprentices, shall likewise keep one Journeyman; and if above three Apprentices, then another Journeyman; on Pain of 10 *l.*

Concerning these Certificates, they were not much in Use when Mr. Dalton wrote, but now they are wholly disused; neither is there Regard of the Ability of the Parents whose Children are placed to any of the Trades above-mentioned, or to any other Trade whatsoever.

'Tis probable when the Statute 4 Eliz. was made, it might be then intended, that if the Father had 40 *s. per Annum*, and bound his Son Apprentice to a Goldsmith in a Corporation, he might be able to give them a competent Fortune to set up his Trade; but such an Estate now will scarce be sufficient to make his Son a Cobler.

Who shall
be com-
pelled to
serve in
Trades.

Every unmarried Person, and likewise every married Person, under the Age of Thirty Years, shall be compelled to serve in these Trades following, upon Request of any Person using the same, viz.

Arrow-head-maker.	Dyer.	Sadler.
Baker.	Farrier.	Sheerman.
Brewer.	Feltmaker.	Shoemaker.
Butcher.	Fletcher.	Smith.
Capper.	Fuller.	Spurrier.
Clothier.	Glover.	Tanner.
Cloth-worker.	Hat-maker.	Taylor.
Cook.	Hosier.	Tucker.
Currier.	Miller.	Turner.
Cutler.	Pewterer.	Woollen-Weaver.

But

But then the Person who is compellable to serve in these Trades, must be brought up in the Trade, or must have used it for the Space of three Years or more, and the Retainer must not be for less than a Year.

But if he have Inheritance or Freehold for Life, of the Yearly Value of 40 s. or be worth 10 l. in Goods, he is not compellable to serve.

The Ability of the Person must be allowed by two Justices, or by the Mayor or Head Officer of a Town-Corporate where he dwelt for a Year together, with two Aldermen or Burgeses, under their Hands and Seals.

He must not be retain'd in Husbandry, or in any Art or Science, nor be a Servant, or in Office with any Gentleman or others, nor have any Farm in Tillage, wherein to employ his Labour.

In the same Sessions of Parliament, viz. 5 Eliz. a Law was made, That Owners of Ships or Vessels, or any Householder using the Trade of the Seas by Fishing or otherwise, &c. might take and keep one or more Apprentices to be bound for 10 Years or under, by Writing indented and enrolled in the Town where such Apprentice dwells, if 'tis a Town-Corporate, and if not, then in the next Town-Corporate.

5 Eliz. c. 5.

Since the making this Act, a Mariner took an Apprentice by Indenture, and there was a Bond for Performance of Covenants; the Apprentice run away, the Bond was put in Suit, and the Obligee pleaded this Statute, and that the Indenture was not Enrolled: But the Case was not argued, and so no Judgment given.

1 Lutw. 474.

But now by a late Act, Anno 2 Anne, Provision was made for putting Poor Boys Apprentices to Seamen; which see in Title Seamen.

The Time of Service must not be less than for a whole Year.

Apprentices in Husbandry.

1. Who shall take Apprentices, and at what Age.
2. Who shall be compelled to serve, and what Age, &c.

Appren-
tices in
Husban-
dry.

Every Husbandman keeping House, and using half a Plow-land in Tillage, may take an Apprentice by Indenture, who must be above the Age of 10, and under 18, and he must serve till 21, or 24, as the Parties can agree.

5 Eliz. c. 4.

And any Justice of Peace may compel fit Persons under the Age of 21 Years to be bound Apprentices in Husbandry, and to commit them upon Refusal, there to remain till bound to serve.

Het. 164.

An Information was brought upon this Statute, for detaining an Apprentice in Husbandry, being bound 'till 21.

and for departing without a Testimonial: Two Judges were of Opinion, that it would not lie, because the Statute doth not extend to provide against the Departure of an Apprentice by Indenture, but an hired Servant; for an Action on the Case lies against the Receiver, and Covenant against the Party.

Servants
in Hous-
bandry.

Any Person between the Age of Twelve and sixty Years may be retain'd in Husbandry, not being employed in Coal, Fishing, Glass, Mines, Sailing, or providing Grain or Meal for London; he must be neither Gentleman or Scholar, nor worth 40 s. *per Ann.* in Lands, or 10 l. in Goods, nor Heir to 10 l. *per Ann.* or to 40 l. in Goods.

The retaining, as well in Husbandry, as in the Trades above-mentioned, must be for a Year, and the Service must continue so long, and the Testimonial required by the Statute relates only to such Servants so retained, and not to our ordinary Menial Servants.

Depart-
ure of
either,

They are not to depart to serve in *another Place* without a Testimonial; if in a Town-Corporate, under the Town-Seal, and the Seals of two Householdiers there; if in the County, then under the Seal of the Constable of the Parish where he last served. This must be Registered by the Parson where the Master dwelleth; for which, he is to have 1 d. The Form is,

This con-
cerns only
hired Ser-
vants in
Husband-
ry, and not
Appren-
tices or Me-
nial Servants;

Memorandum. *THAT W. G. Servant to W. N. of H. in the County of S. Husbandman. (or Brewer, as the Trade is) is licensed to depart from his said Master, and is at his Liberty to serve elsewhere, according to the Statute in that Case made and provided. In Witness whereof, &c. Dated the Day, Month, Year, and Place of making thereof.*

and therefore an Indictment for retaining a Servant without a Testimonial was quash'd, because it did not shew in what Trade. 1 Mod. 78. Herl. 164.

The Servant, who hath no such Testimonial to produce to an Officer where he is to dwell, shall be committed till he procure one; and if he doth not get one in 21 Days, or shews a false one, he shall be whipp'd as a Vagabond. The Master, who retains a Servant without Testimonial, forfeits five Pounds.

The Dan-
ger of pu-
nishing or
discharg-
ing them.

3. If he do not his Duty, the Master may complain to one Justice, who may reconcile them if he can; and if the Fault shall by him be adjudged in the Apprentice, then the said Justice may send him to the House of Correction.

'Tis true, there is no express Authority given to the Justice to send a disorderly Apprentice thither; but it seems to be

be warranted upon the Preamble of the Statute 7 Jac. cap. 4. made for erecting such Houses to punish idle and disorderly Persons : But the safest Way is to bind him over to the Sessions, and from thence he may be sent to the House of Correction.

Neither have the Justices any express Power to discharge an Apprentice if the Fault is in him, as they have if the Fault is in the Master ; but it hath been held, and so is the Law now, that the Clause in the Act, which gives the Justices in their Sessions Power to inflict a Corporal Punishment on a bad Apprentice, is rather an Enlargement than a Restriction of their Authority, for they cannot punish a bad Master, but may discharge the Apprentice ; but they may either punish or discharge a bad Apprentice, as they shall think fit.

1 Mod. 286.
1 Sand. 314.
1 Vent. 174.

The Sessions in this Case have only a Conditional Power, viz. to Discharge or Punish, if one Justice cannot compose the Difference, and therefore Application ought first to be made to him.

If the Fault be found in the Master, then the Justice may bind him over to the Sessions, and four Justices there may discharge the Apprentice, which Discharge is to be enrolled by the Clerk of the Peace.

But the Master and Apprentice may agree to leave each other ; and in such Case the Master may give Leave under his Hand to depart, and then one Justice out of Sessions may discharge him, by allowing the Cause of putting him away. *Eliz. cap. 4.*

Dalt. 87.

But because he cannot be made an Apprentice without a Writing, therefore he cannot be discharged but by a Writing under the Hand of his Master.

Not allowing Meat, Drink or Wages agreed on ; this is a good Cause to be allowed by the Justice, *Gr. F. N. B. 168. L.* so is beating him unreasonably. *F. N. B. 168. Let. Q.*

What shall be a Cause of Departure on the Master's side. On the Apprentice's side.

Any departing from his Service whatsoever, refusing to do any reasonable Service, is a Departure in Law ; but as to that Part of the Act, which says, An Apprentice departing without a Testimonial, shall be whipped as a Vagabond ; it must be an Apprentice in Husbandry, and one of full Age, for otherwise an Infant, who is the Son of a Gentleman, may be punish'd as a Rogue. *Winch. 25.*

If he steal any Thing from his Master above the Value of 12 d. not deliver'd to him to keep, upon due Proof thereof made before one Justice, he may commit him to Gaol, together with those who perswaded him to commit the Felony, and

Thet in an Apprentice.

Apprentices.

those who received the Goods, knowing them to be stole; but if under that Value, then they may be all sent to the House of Correction by one Justice; but according to Mr. Dalton, rather by the Sessions.

The Du-
ty of Ju-
stices, up-
on 5 Eliz.
cap. 4.

The Justice who shall be absent once a Year at *Easter-Sessions*, or six Week afterwards, when the Wages of Labourers, &c. shall be taxed, without a reasonable Excuse to be allowed by the rest of the Justices upon Affidavit, forfeits 10 l.

They are to meet twice a Year, viz. between *Michaelmas* and *Christmas*; and between *Lady-Day* and *Midsummer*, to give Order for the due Execution of the Act; and they are to have 5 s. *per diem*, not exceeding three Days, to be allowed out of the Fines arising by Breach of that Law.

Forfeitures how
to be re-
covered and
applied.

One Moiety to the King, the other to the Informer, other than such as are expressly otherwise appointed to be recovered by Action of Debt or Information, or upon Indictment at the Sessions; and notwithstanding the Forfeitures in Cities and Corporations are given to the Use of the Corporation for the Relief of the Poor, yet the Informer shall have his Part still, and that Part which was to be to the King, shall go to the Corporation. *Cro. Car. 316.*

How long
they must
serve.

For seven Years; and none who hath not served that Time in any Art or Mystery, shall use the same, or set any to work thereon who hath not served out that Time; the Penalty is 40 s. *per Month.*

But Hemp-dresses, Makers of Hemp, Cloth, Nets and Tapestry, are excepted by the Statute of 15 Car. 2. cap. 15.

At Common Law, any Man might use what Trade and as many as he would. This Liberty was first prohibited by the Statute of 37 E. 3. but a short Experience found such a Restriction to be prejudicial, and therefore that Law was repealed the very next Year after it was made.

5 Eliz.

But in Process of Time, this Liberty proved injurious to Trade in general; because ignorant and unskilful Men having no Restriction, did use many Trades which they did not understand, and by this Means the Publick was damaged, till such Men were again restrained by this Statute under a Penalty, tho' Ignorance is a sufficient Punishment to any Man; and it may be, that this Law was made, not only that Workmen should be skilful, but that Youth might be brought up in some lawful Trade. *11 Rep. 54.*

Now

Now in what Court this Penalty is to be recovered, may be a Question even at this Day; for it hath been held, That notwithstanding the Statute 31 *Eliz. cap. 5.* which limits Informations upon this very Act to be prosecuted in the proper County where the Offence was committed; yet Informations were still brought in the Courts above, because the Attorney-General was not expressly prohibited by that Law, in whose Name Prosecutions are made in the Crown-Office. But afterwards, by the Statute 21 *Jac. cap. 4.* he is restrained; the Words of which Act are,

Viz. All Offences to be committed against any Penal Law, for which any common Informer may lawfully bring any popular Action, Bill, Suit or Information; shall be commenced by way of Action, Plaint, Bill, Information or Indictment, before Justices of Assize, *Nisi prius*, Oyer and Terminer, or before Justices of Peace of every County, &c. where such Offences shall be committed, at the Choice of the Party who shall commence such Suit, and not elsewhere, (that is, when the Party might bring the Action either above, or in an inferior Court); and that all Informations, &c. to be brought by the Attorney-General or Informer in any Courts of *Westminster* for such Offences, shall be void. This Clause was added to the *Serjeant Rolls*.

This Statute hath been held to restrain Informations above, but not an Action of *Debt* by a common Informer, so that the mischief is the same still, and the Statute wholly eluded.

But some Judges have held, that where-ever there is a Remedy below, as by Information, it ought not to be sought above, unless in *Middlesex* where *B. R. sess.* And this was agreed by all the Judges lately.

Now the Reason given why an Action of *Debt* is not restrained, is, because generally in Penal Statutes (especially those which were made before the Statute 21 *Jac.*) Direction is given for the Recovery of the Forfeitures, by Action of *Debt*, Information, or otherwise; in which Actions or Suits, no *Wager of Law* or *Essoin* shall be allowed. By which words, the Courts above do still retain the same Jurisdiction, because there are no *Essoins* or *Wager of Law* in inferior Courts. *1 Cro. Carr. 112, 146. Sid. 400.*

Any Trade in which there is an Art or Mystery, is within the Intent and Meaning of this Statute, so as it doth not merely consist in Labour, and so as the Party gets his Livelihood thereby; but then such Trade must be exercised in a Corporation, or Market-Town not corporate; for it hath been held, That the Statute extends to such, and not to Trades

1 Mod. 26. Trades used in Villages, viz. it directs, That Householders in a Corporation, or in a Town incorporate, which is a Market-Town, and using any Art or Mystery there, may take Apprentices for Seven Years: And that no Person shall exercise any Art, &c. which hath not been brought up therein for Seven Years in Manner and Form aforesaid. And Justice *Twisden* said, That he heard all the Judges of *England* declare, that the Statute 5 *Eliz.* should not be extended farther than needs must.

Note, It hath been adjudged, that a Person serving as an Apprentice for 7 Years, tho' not bound, is out of the Statute of 5 *Eliz.*

¶ Dooz App-
rentices.
43 *Eliz.* c. 2.

1. Who shall be bound, and by whom,
2. Who shall take them, and at what Age.
3. How the Money to put them out shall be raised and disposed.

1. Who
shall be
bound.

The Children of such Parents who are not able to maintain them, may be put out Apprentices; and the Parents refusing to suffer them, may be bound over to the Sessions. *Dal.* 107.

Or if here-
fuse, send
him to the
House of
Correc-
tion.

But this must be by the Assent of Two Justices; and the Overseers of the Poor, or the greater Part of them, are to place out such Children, and the Law hath made them Judges of the Disability of the Parents: And one Justice may compel any Person meet to be bound. *Dal.* 103.

There is no Necessity of giving Money with them; 'tis Discretionary in the Church-wardens whether they will give any or not. *Dal.* 106.

2. Who
shall take
them.

Every Man of good Estate or Ability may be compelled to take Apprentices, of every Man who by his Profession or Manner of living must keep such Servants; for the Power given to Church-wardens to place them out, doth necessarily imply, that such who are fit to be Masters must take them.

Before the Statute of 8 & 9 *W.* if a Master had refused to receive such an Apprentice, he was to be bound over to the Assizes; and if he refused to give Bond, he might be committed, or the Church-wardens and Overseers by the Consent of Two Justices might fine him; which if he refuse to pay, the Two Justices might make a Warrant to levy it by Distress, &c. or he might be presented and indicted at Sessions, and there fined or imprisoned.

But now by that Statute, if one Church-warden makes Oath of the Refusal of the Master before Two Justices, he forfeits 10 *l.* to be levied by Warrant of the said Justices, to the Use of the Poor; but the Party may appeal to the next Sessions, whose Order is final.

The Church-wardens cannot place them to Masters in another Parish, but the Justices in Sessions may; and if there are not Masters fit to receive them in any Hundred, then they may be put out in the County at large; but this must be by the Sessions.

Lessee for Years of a Farm taketh an Apprentice, and the term expires before the Apprenticeship ended, he must go with the Farm, if his Master will permit him; but where a man taketh an Apprentice by reason of his Ability, and the Master dieth before the End of the Apprenticeship, he shall go to the Executor or Administrator, if he hath Assets; and if none, then he must return to the Parish where last settled.

Clergymen are not exempted from taking Apprentices. *Stat. 106.*

By the Overseers weekly or otherwise, by taxing every inhabitant, Parson, Vicar, and Occupier of Lands, Houses, Tythes, &c. as they shall think fit.

Money given to put out poor Children Apprentices, if in towns corporate, shall be employed by the Corporation; if in other Places, then by the Parson, together with Constable, Church-wardens and Overseers, &c. or the greater Part of them; who if they refuse, forfeit Five Marks each of them to the Use of the Poor.

The Master must give Security to repay what Money he makes with an Apprentice at the End of Seven Years next ensuing the Date of the Bond, or within one Year after the death of his Apprentice, if he die within that Time.

If no fit Persons to be Apprentices in the Place where the Money is given, it may be employed in the Parishes adjoining.

The Trustees must account in *Easter* Week to the Two next Justices.

They must be above Seven, and under Fifteen; for if above that Age they cannot be compelled: But they must work, or go to Service, or be sent to the House of Correction, or bound over to the Sessions, or to the Good Behaviour.

The Man-Child shall be bound, till he come to the Age of twenty four Years.

Above the Age of Ten Years, any Person may be bound by his own Agreement by Indenture, &c. and if above twelve, he may be compelled by a Justice.

to Trades, upon the Statute; *Eliz. cap. 4.* may

1. Who may be compelled to work, and how punished if refuse.
2. How long they must continue at work.
3. Punish-

3. *How*
the *Apprentice*
shall
be raised,
Stat. 7 Jac.
cap. 1.

At what
Age poor
Apprentices
may
be bound,
7 Jac. c. 3.

At what
Age Ap-
prentices
be bound.

Labour-
ers.

3. Punishment for departing, when they are to work by the Great.
4. For what Wages they shall work.
5. Punishment of giving greater Wages than allow'd, &c.

1. Who
may be
compelled
to work.

5 Eliz. c. 4.

He who hath no Lands of his own, or is not of some Trade or Mystery to get a Livelihood. F. N. B. 168. B.

The Church-wardens and Overseers, &c. may set such Person to work; and if he refuse, one Justice may send him to the House of Correction: So he may those that refuse to work for reasonable Wages.

Persons brought up in Husbandry, or in any of the Arts or Trades before-mentioned, and not able to get a Livelihood, if under Thirty Years of Age, and having no visible Means to maintain themselves but by Labour, may be warned by two Justices to get a Service by a certain Day; and if they neglect, or refuse to be hired for a Year, they may be sent to the House of Correction, or bound over to the next Assizes or Sessions, and to be of the Good Behaviour in the meantime. *Dalt.* 116.

Harvest.

3 Eliz. c. 4.

One Justice may put in the Stocks for two Days and one Night, such as he is in Discretion shall think fit to work and command so to do; if he refuse in the Time of Harvest.

Artificers must likewise work in Hay-time and Harvest, and if they refuse, the Constable shall put them in the Stocks for the like Time; and the Constable neglecting therein, forfeits 40 s.

In Hay-time and Harvest, Labourers may go into other Counties to work; but then they must have a Testimonial under the Hand and Seal of one Justice, to signify that they had not Work where they lived the Winter before.

Labour-
ers.

2. How
long they
must con-
tinue at
work.

If they work by Day, or by the Week, they must continue working from Five in the Morning till after Seven at Night from the Middle of March to the Middle of September, and at the rest of the Year from Twilight to Twilight; only from March to September as aforesaid, they are to be allow'd Two Hours for Breakfast, Dinner, and Drinking; and from the Middle of May to the Middle of August, half an Hour more for sleeping; and all the rest of the Year, an Hour and half for Breakfast and Dinner; and for the Absence of every Hour, the Master may Defalk a Penny out of the Wage.

5 Eliz. cap. 4.

If they depart before it is finished (except for Non-payment of Wages agreed on, or with Leave of the Master, or being taken into the King's Service, or for other lawful cause) they are to be committed for a Month without Bail, and to forfeit 5*l.* to the Party grieved, to be recovered by Action of Debt, &c. over and above the Costs and Damages by Law may be recovered for such Offence.

(*Viz.*) The Wages of Artificers, Labourers and others, shall lawfully be assessed by the Sheriff of the County; this is by virtue of the Stat. of 5 *Eliz. cap. 4.* but the Justices of Peace the greater Part of them resident in the County, have the Power in their * Sessions every *Easter*, or within six Weeks after. This Assessment by the Statute of Queen *Elizabeth*, must be certified under their Hands and Seals to the said Chancellor, &c. who thereupon sends Proclamations into every County and Corporation before the first of *September* following, which the Sheriff or Chief Officer must cause to be proclaimed and enrolled by the Clerk of the Peace before *Michaelmas* ensuing; but if no Alteration is made in the old rates, then there is no need of such Proclamation.

Every Justice, &c. who shall be absent at the Taxing the Rates, not being sick, or not having some reasonable Excuse to be proved upon Oath, and allowed by the rest of the Justices, shall forfeit 10*l.* one Moiety to the King, the other to the Informer, to be recovered by Action of Debt, or Information, or otherwise.

He who gives more Wages, forfeits 5*l.* and may be committed for Ten Days without Bail: He who takes more Wages, and is convicted before two Justices, or a Head Officer, shall be committed for Twenty Days. But a Master may reward a Servant as he pleaseth, so as it be not by way of Contract upon the Retainer.

By the Statute 1 *Anne*, the Oppression of Labourers and Workmen employed in the *Woollen, Linen, Fustian, Cotton*, and other Manufacture, is prevented, *viz.* All Payments to them for Work done in those Manufactures must be in current Money, and not in Cloth, Victuals, or other Commodities; and all Poll delivered to them to be wrought, shall be first weighed, and the true Weight thereof declared.

The Offender in either of those Cases forfeits to the Labourer double the Value of what shall be due for his Work. But if the Labourer shall be guilty of any Fraud or Fault in his Work, then he must answer to the Owner double the Damages by him sustained.

Then as to determining the *Wages, Demands, Frauds*, and other Matters of Labourers in *Woollen, &c.* it must be by any two Justices of Peace where the Controversie doth arise, who may

3. Punishment for departing when Work is to be taken by the Year.

4. For what Wages Labourers are to work.

* Jac. c. 6. By this Stat. it need not be certified into the Chancery, but only proclaimed in the County.

5. *Eliz. c. 4.*

5. Punishment of giving greater Wages.

Labourers in Woollen Trade. 1 *Anne*.

examine Witnesses on Oath; but there lies an Appeal from the Order of the Two Justices to the next Sessions after notice of the said Order, whose Judgment shall be final; and if for the Appellee, then they may give Costs and Charges.

The Act is to continue for Three Years; from the 24th of January 1703, and so to the End of next Session of Parliament.

Servants.

Concerning Menial Servants, these Things are to be observed:

1. Who may be compelled to serve.
2. The putting away a Servant before the End of his Time.
3. A Servant departing himself.
4. Assaulting his Master.
5. Concerning Wages.

1. Who may be compelled to serve.

All single Persons under the Age of Thirty, may be warranted by Two Justices to put themselves into Service at a Time prefixed; and any Woman upwards of Twelve, and under Forty Years, being unmarried, may be compelled by Two Justices to go to Service; and if they neglect and continue to live idly, having no visible Estate, or lawful Way to maintain themselves, may be sent to the House of Correction, and bound over to the Sessions, and to be of the Good Behaviour in the mean Time.

2. Putting away a Servant before the End of his Time.

If a Woman-Servant marrieth, she must serve out her Time; and if both Man and Wife agree to serve, they must perform the Agreement. *Dalt.* 92.

The Master cannot do it without some reasonable Cause to be allowed by one Justice, nor after the End of his Time without a Quarter's Warning given before two Witnesses; if he is otherwise discharged, 'tis unlawful, and the Master forfeits 40s. if he cannot satisfy the Sessions by the Proof of two Witnesses, that he was put away for reasonable Cause.

He ought not to be discharged by reason of Sickness, or any other Disability by the Act of God.

The Law hath made the Justice of Peace the sole Judge whether the Servant was put away for a reasonable Cause or not.

But they may depart from each other by mutual Assent.

3. Servant departing himself. Vide Servants in Bail.

If he depart before the End of his Term, being hired for a Year, without a Cause to be allowed by the Justice; or after his Term is expired, without giving a Quarter's Warning before two Witnesses; in such Case two Justices may commit him without Bail, till he give Security to serve for the Time agreed on.

Or by Vertue of the Statute of 7 Jac. cap. 4. one Justice may send him to the House of Correction, there to be punished as an idle and disorderly Person.

But both Master and Servant may part by Consent, and the Allowance of a Justice is not requisite, because 'tis either a putting away or departing intended by the Statute. As to the Testimonial, it seems only to relate to Servants of Trades and Husbandry.

Retaining Wages, or not allowing Meat, &c. is good Cause of Departure, but must be allowed by a Justice.

A Servant or Workman assaulting his Master; one Justice may bind him to the Good Behaviour, and so to next Sessions. Or two Justices may commit him for a Year or less, according to their Discretions; the Proof must be made before the Justices committing, either by the Confession of the Servant, or the Oath of two Witnesses.

All Retainers, Promises or Payment of Wages contrary to the Statute, and all Writings and Bonds for that Purport, are void.

If the Master put away the Servant, he must have Wages for the Time he served; but if the Servant depart himself before the End of his Time, he loses all his Wages.

If he is retained according to the Statute for a Year, and the Master dieth within that Time, the Executor must pay his Wages, or otherwise if the Retainer was not for a Year, his Wages ought not to be abated in respect of Sicknes, or any other Disability by the Act of God.

If the Master give, or the Servant take, greater Wages than are allowed by the Statute, two Justices may commit the Servant for Ten Days, and the other One and twenty Days, without Bail; and the Master also forfeits 5 l.

Warrants upon the Statute of 5 Eliz. cap. 4. concerning Apprentices.

A Warrant against a disorderly Apprentice.

To the Constable, &c.

WHEREAS Complaint hath been made unto me by T. P. of, &c. Taylor, That J. O. now being an Apprentice to him, is a stubborn and disorderly Servant, and doth very much misbehave himself towards his Master: These are therefore to command you to bring in the said Master and his Apprentice before me, or some other Justice of the Peace for the said County, to be examined

4. Servant assaulting his Master.

5. Wages.

5 Eliz. c. 4. He may be sent to the House of Correction.

Apprentices.

ed concerning the Premises; and farther, that such Order and Direction may be taken between them, as to Justice doth appertain. Given under my Hand and Seal, &c.

A Warrant against a Master for abusing his Apprentice.

To the Constable, &c.

5 Eliz. c. 4.

Suff. ss. **W**Hereas Complaint hath been made unto me by R. J. Apprentice to R. N. of the Parish of, &c. Weaver, That the said R. N. doth not allow unto his said Apprentice sufficient Meat, Drink and Apparel, but hath often immoderately corrected him without any just Cause, &c. These are therefore, (as in the former Warrant.)

Or Mayor,
or Head-
Officer of a
Corpora-
tion.

This Warrant must be made by the Justice where the Master dwelleth, and if the Justice cannot reconcile them, he may bind the Master over to next Sessions, where Four Justices, *Quorum unus*, may discharge the Apprentice under their Hands and Seals.

The Discharge.

Suffex ss. **W**E H. P. T. N. N. S. and R. B. Four of Her Majesty's Justices of the Peace (one whereof is of the *Quorum*) for the County aforesaid, having heard and examined the Matter in Difference between R. J. an Apprentice to R. N. of, &c. and it appearing to us, that the said R. N. hath not allowed his said Apprentice sufficient Meat, &c. and hath several Times beaten him very immoderately without any just Occasion: We do therefore, for the Cause aforesaid, discharge the said R. J. from his said Apprenticeship; and do hereby, under our respective Hands and Seals, pronounce and declare, That the said R. J. is discharged from being any longer an Apprentice to his said Master. Witness our Hands and Seals, &c.

This Discharge must be enrolled by the Clerk of the Peace or Town-Clerk, which shall be good against the Master, his Executors and Administrators.

A Warrant

Warrant against an Apprentice for departing from his Master.

To the Constable, &c.

ss. **W**Hereas Complaint hath been made unto me by *W. B. of L. &c.* That *W. C.* his Apprentice lately departed from his Master, contrary to Law: these are therefore in Her Majesty's Name to command you, That you apprehend the said *W. C.* as soon as he can found within your several Limits, or in either of them, to bring him before me, or some other Justice of Peace of this County, to answer the Premises. Given under my Hand and Seal, &c.

5 Eliz. c. 4.
The Justice may grant this Warrant upon Complaint of the Master, and he may reconcile the Matter, if he can. But I do not see how he can punish an Apprentice by Indenture; the Sessions may.

An Information will not lie in this Case; but an Action in the Case against him who receives an Apprentice by Indenture, and an Action of Covenant against the Apprentice himself.
For Apprentices upon the Statute *43 Eliz. cap. 2.* Precepts concerning them.

Warrant directed to the Officers to bring in the Names of such who are fit to be bound, &c.

The Church wardens and Overseers of the Poor of the Parish of B. in the County of Sussex, and to every of them.

ss. **T**Hese are in Her Majesty's Name to command you, That on Monday next, the 21st Day of the Instant *August*, you bring unto us in Writing at the House of *J. T. of, &c.* the Names of all such poor Children of your Parish, whose Parents you shall not think able to maintain them; and the several Ages of such Children; which Children, or such you shall think fit to be put forth Apprentices, you are to bring before us at the Time and Place aforesaid: And likewise that you do then and there present to us in Writing, the Names of such Inhabitants of your Parish, especially such who have not already taken such poor Children Apprentices, to whom you shall think fit such Children may be placed; and that you give them Notice, they are then required to appear before us to shew Cause why such Children may not be bound to them, and that they be then also there present, and fail not. Given under our Hands and Seals, &c.

43 Eliz. c. 2.
Two Justices, *Quorum unus.*

Apprentices.

A Warrant against a Master, to levy the Penalty of 10l. for refusing to receive an Apprentice.

§ 8 & 9 Will. cap. 30. Two Justices recite the Indenture.

* Where the Offence was committed.

Suffex ff. **W** Hereas R. J. a poor Ma'e-Child, was by the Church-wardens and Overseers of the Poor of the Parish of, &c. by and with the Assent of R. B. and W. N. Two of Her Majesty's Justices of the Peace for the said County, lately placed and bound by Indenture as an Apprentice to T. P. of, &c. to dwell with him from the Date of the said Indenture until the said J. R. should attain his Age of 24 Years, pursuant to the Statute in that Case made and provided. And whereas J. O. one of the Church-wardens of the Parish of, &c. hath made Oath before us, That the said T. P. doth refuse to receive the said R. J. and provide for him, as by Law he ought to do, and doth also refuse to seal a Counterpart of the said Indenture. These are therefore in Her Majesty's Name to command you, &c. to levy the Sum of 10l. by Distress and Sale of the Goods of the said T. P. for the Use of the Poor of the * Parish of, &c. And hereof fail not. Given under our Hands and Seals, &c.

Servants.

Warrants concerning them.

Against a Servant departing before the End of his Time.

§ Eliz. c. 4. Two Justices. One Justice may allow the Cause of Departure.

Suffex ff. **W** Hereas W. G. being lawfully hired and retained in the Service of W. N. of, &c. for the Space of one whole Year, is lately departed from his said Service without the Leave of his Master, and before the End of the said Term: These are therefore in Her Majesty's Name to command you, &c. that you apprehend the said W. G. and bring him before me, or some other of Her Majesty's Justices of the Peace for this County, to find sufficient Sureties faithfully to serve his said Master, according to the Agreement between them; and if he shall refuse so to do, that then you cause him to be conveyed to the common Gaol of the said County, there to remain till he shall find such Surety as aforesaid. Given under our Hands and Seals, &c.

Or he may be sent to the House of Correction by this *Mittimus*.

Apprentices.

To the Keeper, &c.

Suffex ff. I Send you here withal the Body of *W. G.* late of, &c. being an idle and disorderly Fellow, and one who will not continue in any Service, nor follow any honest Course of Life; and I require you hereby to receive the said *W. G.* into your Custody, and to keep him safely until he shall be from thence delivered by due Course of Law; and in the mean Time to make him work, and to give him such moderate Correction as to you shall seem necessary; and that at the next Quarter-Sessions you give an Account what you have done concerning this Precept: And hereof fail not. Given under my Hand and Seal, &c. 7 Jac. c. 4.

A Warrant for Wages.

Wages.

To the Constable, &c.

Suffex ff. **W**Hereas Complaint hath been made unto me by *J. C.* late Servant of *T. P.* of, &c. That he the said *J. C.* being lawfully hired by his Master, did serve him for the Space of, &c. and that the said *T. P.* doth now refuse to pay the Wages which are justly due to his said Servant for the Time he hath served him: These are therefore to require you to bring the said *T. P.* before me, or some other Justice of Peace for this County, to answer the Premises; and that you give Notice to the said *J. C.* to be then and there present to make good his Complaint. Given under my Hand and Seal, &c.

To command a Woman that works at her own Hands, to go to Service.

To the Constable, &c.

Suffex ff. **W**E *R. B.* and *W. N.* Two of Her Majesty's Justices of the Peace for the County aforesaid, being informed, That *S. W.* of, &c. is a Person of able Body, and not having any visible Means to maintain her self but by Labour, doth refuse to go to Service, but liveth by working at her own Hands: You are therefore required forthwith to give Notice to the said *S. W.* that she put her self into some Service before *Michaelmas* Day next ensuing; and she is hereby likewise to conform her self hereunto. Given under our Hands, &c.

§ Eliz. c. 4.
Women of
the Age of
Twelve,
and under
Forty, un-
married,
and out of
Service.

The like
Warrant
for any sin-
gle Person
under the
Age of
Thirty, and
if herefuse,
he may be

sent to the House of Correction, or bound over to the Sessions. *Dalton* 116. If he refuse, she may be committed till she become bound to serve.

A Warrant to levy 40 s. on a Master, for putting away a Servant before the End of his Term, without a sufficient Cause to be allowed by one Justice, or a Quarter's Warning before the End of the Term; but then the Retainer must be either in the Arts or Mysteries mentioned in the Statute, as *Baker, Brewer, Butcher, &c.* or in Husbandry; for the Statute doth not seem to extend to common hired Servants, though the Practice is otherwise.

To the Constable, &c.

Suffex ss. **W** Hereas it hath been duly proved upon Oath before us, That R. C. of, &c. Baker, hath put away N. V. his Servant (being lawfully retained) before the End of the Term agreed on between them, contrary to the Statute in that Case made and provided: These are therefore to require you to levy the Sum of 40 s. forfeited by him for the said Offence, by Distress and Sale of the Goods of the said R. C. rendring unto him the Overplus. And we do hereby require you to bring the said * 40 s. into Court at the next General Quarter-Sessions to be holden, except the said R. C. shall in the mean Time shew some reasonable and sufficient Cause to be allowed before Two Justices of the Peace, or one at least, within the County aforesaid, for putting away his said Servant in Manner as herein and hereby alledged: And hereof fail not. Given at the General Quarter-Sessions of the Peace held for the County aforesaid at L. &c.

* Because the Party hath Liberty to prove by Two Witnesses at the Sessions the Cause, &c. to save his Forfeitures, if the single Justice, or two of them, shall not allow the Cause out of Sessions.

A Warrant for the Relief of a Servant out of Service.

To the Constable, &c.

43 Eliz.c.2. *Suffex ss.* **W** Hereas I am informed, That F. C. hath been lawfully hired, and served for one Year in the Parish of, &c. so that now he hath acquired a legal Settlement there: And whereas the said F. C. hath complained unto me, that he being discharged from his late Master cannot find himself a Service, and is thereby destitute of any Means to support or relieve himself otherwise than

such Service or Labour, which he is willing to perform : These are therefore to require you, that upon Receipt hereof you set the said F. C. to work, and provide for him according to Law : And hereof fail not. Given under my Hand and Seal, &c.

Indictments

For using a Trade not being Apprentice to it for Seven Years.

Suffex ff. **J**ur', &c. quod F. C. nuper de Lewes in Com' Suffex præd' Teoman, decimo octavo die Augusti, Anno, &c. & continue postea usque diem caption' hujus inquisition' scilicet decimum diem Octobris, Anno, &c. existen' per spacium trium mensium integrorum apud L. præd' in Com' præd' illicite pro lucro suo proprio usus fuit exercuit & occupavit Artem, Mysterium siue manual' Occupationem Pistoris (Anglice, a Baker) existen' Arte, Mysterio siue manual' Occupat' infra hoc Regnum Angliæ duodecimo die Januarii, Anno Regni Domine Elizabethæ nuper Regine Angliæ, &c. quinto usitat' & occupat' ubi reuera idem F. C. eodem duodecimo die Januarii, Anno Regni dictæ Dom' Elizabethæ nuper Regine Angliæ, &c. quinto supradicto non usus fuit aut exercuit legitime præd' Artem, Mysterium siue manual' Occupat' Pistoris præd' nec aliquam al' Artem, Mysterium siue manual' Occupat' nec unquam postea educat' fuit in præd' Arte, Mysterio siue manual' Occupat' Pistoris per spacium septem Annorum tanquam Apprentic' (Anglice, an Apprentice) contra formam Statuti de dicto Anno quinto Regni dictæ Domine Elizabethæ nuper Regine Angliæ, &c. in hujusmodi casu nuper edit' & provis' necnon contra pacem dict' Dom' Regine, nunc Coron' & Dignitas' suas.

The Statute of 21 H 8. cap 7. which makes it Felony for a Servant to go away with his Master's Goods to the Value of 40 s. with an Intent to steal or imbezel them, doth not extend to Apprentices, but to Servants above Eighteen Years old. 21 H.8. c.7.

But the Goods must be delivered to them to keep ; for if a Bond be delivered to keep, and a Servant receives the Money and goeth away, this is not Felony, because he did not receive it by the actual Delivery of the Master.

So 'tis if the Master deliver Cattle to the Servant, and he sell them in a Market or Fair, and goeth away with the Money. 3 Inst. 105.

Approber. Armour.

An Indictment upon the Statute before-mentioned.

Suffex ff. *Jur.*, &c. quod W. N. de H. in Com' præd' Gen' decimo octavo die Augusti, Anno Regni, &c. in Domu Mansionali ipsius W. N. apud H. præd' in Com' Suffex præd' deliberavit cuidam J. C. de H. præd' tunc Servienti ipsius W. N. pro uno Anno integro retento, ac etatu viginti Annorum adtunc existent' quinque libras in pecuniis numeratis de bonis ipsius W. N. propriis ad intentionem quod idem J. C. easdem salvo custodiret ad usum præd' W. N. tunc Magistri sui prædicti. tamen J. C. dicto decimo octavo die Augusti Anno supradicti (non existens tunc Apprenticius dicti W. N.) apud H. prædict' in Com' præd' à Magistro suo una cum præd' quinque libris dicti W. N. tunc Magistri sui maliciose & felonice decessit, abiit & aufugit ea intentione ad furand' dict' quinque libras contra fiduciam in eo per præfat' W. N. tunc Magistrum suum reposit' ac contra pacem dicti Domini Regis coron' & dignitat' suas & contra formam Statuti, &c.

Approber.

THis is a Person, who being in Prison for the Fact for which he is indicted, and either arraigned upon it, or upon an Appeal, and there being a Coroner assigned by the Court, confesseth that very Fact before him, and then impeacheth other Persons as Coadjutors with him in the same Crime.

And so much Credit is given to this Confession, that Process shall issue out against the Offender, and he shall be arraigned as if an Indictment by a Grand Jury had been found against him.

Armour.

IN 2 Ed. 3. the Statute of Northampton was made, That none should come with Force and Arms before the King's Justices, or his Ministers in executing of his Commands, nor go or ride armed in an Affray of the People, or by Night or by Day before the King's Justices, or in any other Place.

The Punishment was Forfeiture of the Armour, and Imprisonment during the King's Pleasure. This Law was revived Anno 7 R. 2. and afterwards Anno 20 R. 2. it was enacted, That it should be duly observed upon the Pains in the first Act mentioned; and as a farther Punishment, the Justices of Peace, who have Power to put the Statute of Northampton in Execution, might inflict a Fine upon the Offender.

3 last. 160.

My Lord Coke in his Exposition on the Statute, saith, That the Commands of the King therein intended, are his Writs and

and Proceſs of Law, which are to be executed by his Miniſters; and therefore if any Perſon with Force reſiſt them, the Sheriff is enabled *vim vi repellere* with the Force of the County.

The Party grieved may have a Writ upon this Statute, directed to the Sheriff, who finding the Force, may make Proclamation to depart; and if they reſuſe, he may ſeize their Armour, and commit them. E. N. B. 54. 249. F.

But this Writ is now diſuſed, becauſe the Party could not be reſtored to his Poſſeſſion thereby, and a ſpeedier Remedy is given by the Statute of 8 H. 6. cap. 9. which you may ſee in Title *Forcible Entry*. 21 Jac. c. 15.

My Lord Coke farther tells us, That this Act had ſo good an Effect upon the People, that it was not put in Execution for above Twenty Years after it was made; and then a Quarrel happening between Sir Thomas Pigett and Sir John Trevor; the firſt carried Arms ſecretly under his Garments, as well before the Judges of the King's Bench as others, for which he was committed by the Chief Juſtice, and his Arms taken from him, and not enlarged till the King's Pleaſure was known.

And I think few Proſecutions have been made upon this Law ſince that Time; I remember but one, which was Mich. 2 Jac. 2. againſt Sir John Knight, for walking about the Streets at Briſtol with a Gun, and coming to Church ſo armed, it was tried at the Bar in B. R. and the Defendant acquitted.

Any Perſon may uſe Force and Arms in the Defence of his Perſon or Houſe againſt Robbers, or againſt thoſe who ſhall aſſemble to do him any Violence, or to ſuppreſs Riots; but the ſafeſt Way is to be armed in the Aſſiſtance of the King's Officers or Miniſters of Juſtice. *Who may arm themſelves.*

The Armour of Recuſants convicted ſhall be taken from them by Warrant from Four Juſtices of Peace at Quarter-Sessions, and yet they ſhall be charged to the Militia according to their Ability. *Who ſhall be diſarmed.* 3 Jac. c. 5.

If they conceal their Arms, or give any Diſturbance in the Delivery, one Juſtice may commit them for three Months without Bail.

Any Juſtice may command Weapons to be taken from a Priſoner brought before him.

Arms, Munition and Gun-powder ſhall not be imported without the King's Licence, under Pain of Forfeiture of the Goods, and treble the Value, one Moiety to the King, the other to the Proſecutor, by Action of Debt, &c. 1 Jac. 2. c. 3.

Thoſe who obtain Letters Patents for ſole making Arms or Gun-powder, and put the ſame in Execution, are made guilty

of a *Præmunire*, and the Grants are void, any Clause of *Non obstante* notwithstanding.

Arrest.

Who may
be arrest-
ed.

AL Persons under the Degree of a Baron may be arrested by a Warrant from a Justice of Peace, for any Misdemeanor, or any Thing done against the Peace. *Dalt.* 406.

A Peer may be arrested by a Writ out of B. R. for a Contempt or Breach of the Peace.

A Clergy-man, but not in Divine Service.

A *Feme Covert* for a Riot.

An Infant, if he can't find Sureties for the Peace, but not for the Breach of any Statute, unless he is therein charged.

The Pan-
ner of Ar-
resting.

Commit-
ment, and
by what
Process.

*But a pri-
vate Person
cannot
break open
a Door.

'Tis no Arrest for a Constable having a Warrant to command the Party to appear before a Justice of Peace, but he must lay hold on his Person. *Dalt.* 405.

Where an Affray is made, and the Offenders fly into another County, the Constable may pursue them.

*He may break upon a Door to take an Offender; but then some Felony must be committed. *H. P. C.* 93.

Sessions may award a *Capias* against a Person indicted, and by Vertue thereof the Officer may break open Doors.

Commitment by a Justice, must be to the common Gaol, by *Mittimus* under his Hand and Seal, containing the Cause; and it ought to conclude, *viz.* There to remain till he be delivered by due Course of Law; otherwise 'tis void. *H. P. C.* 94.

A Sworn Officer need not shew his Warrant.

By a pri-
vate Per-
son, and
for what
Cause.

3 Inst. 118.
Dalt. 408.

In all Criminal Cases where any one is in Danger of Life or Member, any private Man may arrest another without Presentment, Process or Warrant; so likewise where a Felony is committed, every Person present must endeavour to take the Offender, or may be fined and committed; and in such Case, any suspected Person, tho' upon common Fame only, may be taken; and if he make Resistance, you may justify the beating of him.

Offenders, by { Dangerously wounding a Man in an Affray.
Unlawfully Hunting in Parks.
Keeping Guns not qualified.
Night-walking.

Arrest and Imprisonment.

57

All these may be arrested by any private Person; but then they must be brought to the Constable, and if he is not to be found, then to the Justice, in order to their Commitment. *Dalt.* 408.

A Justice of Peace may, at his Discretion, grant a Warrant to take such whom he shall suspect to be inclined to break the Peace. *Dalt.* 409.

So upon his own View he may commit those who offend against Penal Laws.

Herein any Person aiding him, may break open an House to apprehend a Felon, having a lawful Warrant; so likewise to apprehend one who hath dangerously wounded another; so where an Affray is in a House, and the Door shut, the Constable may break it open; so upon a forcible Entry and Detainer, either upon View of Justices, or upon an Inquisition taken before them; so may the Sheriff, upon an Outlawry in a Personal Action; so he may upon a Warrant for the Peace or good Behaviour, and generally in all Cases where the King is Party. *Dalt.* 264. *Mere* 606.

But he ought first to acquaint the Person of the Cause, and to desire the Doors may be opened.

If Complaint be made to a Constable of Felony done, or Blow given, though the wounded Person is not dead, if an Assault be made on himself, or where there is any Breach of the Peace done in his View, he may put the Offenders in the Stocks, or secure them in his own House till he can bring them before a Justice. *H. P. C.* 92.

When brought before the Justice, if he hath Power by any Statute to bind him over, or to cause him to do any Thing, and he refuseth, he may commit him till he is conformable.

If he fly into another County, and is taken there, he shall be committed to Gaol, not where the Felony was done, but where taken.

Constable may put him in the Stocks for a reasonable Time till he can get Help to convey him to Gaol.

Gaoler may make his own House a Gaol; but a Justice must not send him thither, but to a common Gaol, and the Gaoler cannot make his own House a Gaol above a Day and a Night.

At Common Law, the Gaoler could not put Irons upon a Prisoner; but by the Statute of *W. 2. cap. 11.* 'tis enacted, *That carceri mancipetur in ferris.*

By a late Statute, the Prisoner must not be carried to a Victualling-House without his Consent, so as to charge him with any Sum of Money for Meat or Drink, nor more taken for the Arrest than by Law required, nor any Reward exacted for keeping him out of Gaol till he find Bail or a Surety, nor more taken for a Night's Lodging, or other

Ex-

Breaking open a Door by Officers of Justice, and in aid of them.

H. P. C. 90.

By a Constable without any Process.

What is to be done when an Offender is arrested.

Cro. Eliz. 829.

22 & 23

Car. 2.

cap. 20.

Expences, than what shall be allowed by the next Justice or Sessions.

In carrying him
to Gaol,
Vide Tit.
Constable.

This must be at his own Expence, (if able) otherwise at the Charge of the Town where taken, who may be distrained if they refuse.

If the Prisoner refuse to be at the Charge, the Justice may direct a Warrant to the High-Constable, or Petty Constable of the Town where he hath any Goods, to sell as much as will satisfy the Charges.

If the Gaoler will not receive him, the Constable must bring him to the Town where taken, who must keep him till next Assizes, and there the Gaoler shall be punish'd.
Dalt. 413.

The Time
of Imprisonment.

Where Imprisonment is directed by any Statute, and no Time limited when the Offender shall be committed, it must be presently; so where 'tis not limited, how long he shall continue in Custody, there 'tis in the Discretion of the Court.

The Gaoler.

He must be kept in *salva & arcta Custodia*, and if the Gaoler suffer him to go Abroad at any Time, tho' he return to the Prison, 'tis an Escape, and the Gaoler may be fined; for Imprisonment is a Punishment of the Offender, as well as the keeping of him to answer his Fault.

Assault.

Assault. is derived from the old Latin Word *Affultus* which signifies a *leaping on another*, so that *Ex vi termini* it cannot be performed without the Offering some Hurt to the *Person*, as by Striking, &c. And Battery is the wrongful beating another.

Justifiable.

As Parents have over their Children till they come of Age, for till then they may chastise them for Offences without Breach of the Peace.

As the Master hath over his Servant, the School-Master over his Scholars, a Gaoler over his Prisoners, and any Master over his Kinsman who is mad; or who, being at Liberty, attempteth to do any Mischief.

1. Where
When have
a Natural
Power
over o-
thers.

2. Where
When have
a Civil
Power
over o-
thers.

He may strike another to defend his Person from being wounded or beaten.

If a Soldier hurt another by Misfortune or Negligence, and not wilfully; so if two agree to play at any Game, and one is hurt, 'tis no Breach of the Peace, because it was by consent.

3. In Defence of ones Person.

I may justify the beating of another, who would do Mischief to Wife, Father or Mother; for I am bound by Law to protect the one, and I owe Obedience to the other.

4. In Defence of the Person of another.

So may the Wife justify the beating one who would beat the Husband; so may the Father or Mother any Person who would beat their Children.

A Servant may likewise justify the beating another, in defence of his Master, (& *converso*) but not of his Master's Father or Mother, &c. because he owes no Obedience to them.

So where the Life of any one is in Danger by beating, or otherwise, any Person may endeavour to resist, and that by beating him who offereth the Violence. *Dalt. 206.*

As if any one would by Force wrongfully take them away, whether I have a Property in them, or a bare Possession only, 'tis justifiable to resist; but the Offender must not be wounded; and if killed, 'tis Felony.

5. In Defence of my Goods.

So 'tis if another endeavour to put me out of Possession of Land, or to turn a High-way, or to direct a Water-course, &c.

Indictment for an Assault.

Lex ff. Jur. &c. quod T. P. de Parochia de H. in Com' prædicta Sciffor. 30 die Januarii, Anno Regni, &c. apud Parochiam prædictam in Com' prædicta in & super J. O. in pace Dei & dictæ Reg' adtunc & ibidem existens vi & armis insultum fecit & J. O. adtunc & ibidem verberavit vulneravit & male tractavit ita quod de vita ejus desperabatur & alia enormia ei adtunc & ibidem intulit ad grave damnum ipsius J. O. & contra pacem dictæ Reg' nunc Coronam & Dignitatem suam.

It has been observed, That if the Words, *vi & armis*, are put immediately before the *Insultum fecit*, that the Indictment is naught, though these Words are in the Beginning of it; but this seems to be a Nicety grounded upon no manner of Reason.

Sid. 140.

I shall conclude this Title with a remarkable Case, which is thus: One Mackell courted the Sister of Mr. Goss, a Bar-

Sid. 165.

rister

Attainder.

risters of *Greys-Inn*, and a Justice of Peace for *Suffex*, and he not consenting to the Match, was sent for to an Ale-house by Mr. *Machell* and one *Tully*; when he came thither, *Tully* went out of the Room to prevent any Person from assisting Mr. *Gott*; whom *Machell* beat so much, that he broke his Arm: And for this Battery, he and *Tully* were indicted and found guilty; and *Machell* was fined 1000*l.* and *Tully* 500*l.* and both committed for a Month without Bail, and to find Sureties for their Good Behaviour for seven Years.

Attaint, See Jurp.

Attainder and Conviction.

1. What it is, and how it differs from Conviction.

THESE Words are used promiscuously, and sometimes one is signified by the other; as by the Stat. of 3 *H. 7. cap. 1* 'tis enacted, That if any Man be acquitted of Murder upon an Indictment, or *attainted*, an Appeal may be brought; the Benefit of Clergy is not had; here the Word *Attainted* must signifie *Convicted*, because after Attainder 'tis too late to have the Benefit of Clergy.

But in Propriety of Speech, a Man is said to be *attainted* when after Conviction Judgment is passed by the Court, and he is said to be *convicted* when he confesseth the Fault, or is found guilty by a Jury, and before Judgment given.

5 H. 4. c. 6.
13 H. 4. c. 7.
11 H. 6. c. 11.
3 Jac. c. 4.

Yet a Man may be *attainted* upon an Outlawry, and convicted in many Cases by his own Confession, and without a Verdict; as generally upon Penal Laws, *viz.* a Recusant indicted at Sessions, and Proclamation made for him to surrender himself to the Sheriff, if he neglects to appear at the next Sessions, the Record of his Default is a Conviction, and so in many other Cases.

The Punishment of a Person *attainted*, *viz.*

2. The Punishment of a Person *attainted*.

Loss of Life.

Corruption of Blood.

Forfeiture of Fee-simple Estate from the Time of the Offence, so that the Queen shall have *Ann. Diem & waste* therein, and then it goes to the Lord of the Fee by Escheat, but the Lord may compound with the Queen, and have it presently.

Forfeiture of Goods from the Time of the Attainder only.

Before

Before At-
tainder. { He may sell his Goods for his Maintenance in Prison. *Dalt.* 363.
If he is attainted of Felony and pardoned, tho' he cannot be indicted for any Felony committed before the Attainder, yet an Appeal of Robbery lies against him for a Robbery committed before, because the Party may have Restitution upon an Appeal.

3. What may be done by or against the Party before or after, &c.

'Tis true, he may be indicted for a Treason done before the Attainder of Felony, because 'tis not only an Offence of higher Nature, but the Queen, upon the Conviction, will be entitled to the Forfeiture of the Lands; however, if such Land was first vested in the Lord by the Attainder in Felony, it shall not be divested by any Conviction for a Treason committed before such Attainder, so as to give the Queen Title.

If the Husband makes a Feoffment in Fee, then commits Treason, is pardoned and dies, his Widow shall not have Power against the Feoffee, because she is barred by the Attainder, so long as it remains unreversed.

1 Leon. 3.

After At-
tainder. { A Grant of Goods or Lands shall bind all Persons but the King, and the Lord of the Fee.
His Body is his own till Execution, and if he is killed before that Time, his Wife may have an Appeal.
He may be taken in Execution at the Suit of any Subject for Debt, but may be executed notwithstanding he may purchase Lands in Fee.

At Common Law, if a Felon was found guilty before the Coroner, or that he did fly, the Sheriff or Coroner might seize his Goods before Trial for the Use of the King, which ought to be appraised and left in the Custody of the Neighbours where the Offender lived.

4. What is to be done with his Goods.

The Law was the same if he did not fly, but was indicted; but then after the Appraisement they ought not to be removed out of his House before Attainder, if the Offender could give Security that they should not be imbezeld; if not, then they were to be delivered to the Neighbours, who ought to keep them during his Imprisonment, and he was to have reasonable Maintenance out of them till Conviction. *Dalt.* 362.

By the Statute of 1 R. 3. cap. 3. The Common Law is in this Particular confirmed, and the Party imprisoned shall recover double the Value of his Goods seized by any Officer, or taken out of his House before Conviction. *Dalt.* 363.

After

After Conviction, or *fugum fecit* returned by the Coroner, all the Goods, the Corn growing, the Profits of the Fee-simple Estate for a Year and a Day, and the Issues of intailed Lands during Life, and all Debts due upon any Securities, are forfeited to the Queen, and the Party to whom the Queen shall give the same may bring an Action in his own Name to recover them.

5. Attain-
der by
Outlaw-
ry.

If 'tis erroneous, the Party may appear at any Time, and reverse it by Writ of Error.

At Common Law, it was an Error in Fact for the Party outlawed to be beyond Sea at the Time of the Judgment pronounced upon the Exigent; for which, the Outlawry might be reversed in all Cases.

5 & 6 Ed. 6.
cap. 11.

The Advantage of this Error is taken away in Treason, by the Statute of 6 Ed. 6. but not wholly, for there is a Proviso, That if the Person shall yield himself to the Chief Justice within a Year and a Day after the Outlawry pronounced, he shall be admitted to traverse the Indictment.

Sir John Hawles tells us, That no Judgment was ever yet given upon Construction of this Statute before that of Sir Thomas Armstrong, in the late Reign, because a Trial was never before that Time denied to a Person outlawed, if he came within the Time limited.

'Tis true, Sir Thomas Armstrong did not yield himself, but was taken in Holland, but still within the Year; so that it seemed a great Hardship to deny him a Trial upon the Nicety of a Word.

Indictment for seizing the Goods of a Felon before Conviction.

Suffex ff. *J. Ur. &c. quod cum quidam J. O. nuper de H. &c. in Com. prad. Labourer, capt. fuit pro suspitione felonie per ipsum perpetrata. (viz.) pro eo quod prad. J. O. felonice cepit unum equum de bonis & catallis ejusdem F. O. apud H. prad. in Com. pradict. & quod postea prefat. J. O. ductus fuit coram G. C. Arm. un. Justiciarij. Domina Regina ad pacem, &c. & per ipsum commissus fuit Gaule dicta Domina Regina infra Com. prad. pro suspitione felonie prad. super quo quidam B. K. Constabularius Parash. de H. prad' adtunc & ibidem cepit, &c. de bonis & catallis prad. J. O. sic commiss. antequam convict. fuit de felonie prad. contra formam Statut. &c.*

Badgers.

Badgers.

Transporters,
Buyers,
Carriers,
Laders,
Kidders,

} either of

Butter,
Cheese,
Corn
or
Grain.

1. Their Qualifications.

2. Forfeitures.

3. Licences.

5 Eliz. c. 12.

Must be a married Man and Householder, of thirty Years of Age, licensed in Sessions of the County where he hath lived three Years, under the Hands and Seals of three Justices. *Quorum unus, &c.*

This is to be in Force for one Year, and no more, and must be enter'd by the Clerk of the Peace, &c. who for writing it hath 12 *d.* and for Entry 4 *d.*

He must give Recognizance in Sessions, that he will not engross; for writing whereof he is to pay 8 *d.* and for Entry 4 *d.*

1. How
qualified.
Drover-
like Qua-
lification.

He who hath no Licence, forfeits 5 *l.* to be divided between Queen and Prosecutor.

2. forfeit-
ure.

'Tis to be recorded in Sessions by Inquisition, Verdict, or Oath of two Witnesses; the Process is an Estreat for the King's Moiety, and a * *Capias* for the Moiety of the Prosecutor, which must be in the Name of the Queen, and the Teste by two Justices; and there must be three Weeks between the Teste and the Return thereof.

* Which see
in Title.

A Licence for a Badger of Corn.

Suffex ss. **A**T the General Quarter-Sessions of the Peace, held at L. for the East Part of the County aforesaid, this present 9th Day of July, in the 5th Year of the Reign, &c. R. H. is licensed and appointed by the Justices of Peace in their said Sessions, to be a common Badger, Lader, Kidder, Carrier, or Buyer of Corn or Grain in any * Market or Fair whatsoever; and the same to convert into Meal, and to carry it to the City of London, or the Suburbs thereof, or to any other Fair or Market, so that he use the same according to the true Meaning of the Statute in that Case made and provided against Forestallers, Regrators and Ingrossers, and not otherwise. This Licence is to continue for one Year next ensuing. In Witness whereof, &c.

3. Licen-
ces.
Three Ju-
stices in
Sessions.

* Cannot
buy Corn
out of Mar-
ket to sell
again,
without
express
Words in
the Li-
cence, un-
der Pain of
5 *l.* as prius.

A Licence

A Licence for a Common Higler.

Three Ju-
stices.

Suffex ff. **A**S in the former Licence, &c. to be a Common Higler, Lader, Kidder, Carrier, Buyer and Seller of Hens, Chickens, Capons, Eggs, and any other dead Viſtuals, (except ſuch which are prohibited by any Law) in any Market or Fair whatſoever, and to uſe the ſaid Office and Dealing as aforeſaid, according to the Statutes in that Caſe made and provided; this Licence to continue only for a Year next enſuing, and no longer. In Witneſs whereof, three of the Juſtices of the Peace for the County aforeſaid, then preſent in the ſeſſions aforeſaid, have ſet their Hands and Seals to this preſent Licence. Witneſs, &c.

The Recognizance and Condition, &c. taken in the ſeſſions.

THAT he ſhall not by Colour of his Licence foreſtall or engroſs, or praſtiſe or do any Thing contrary to the true Meaning of the Statutes made againſt Foreſtallers and Regrators, or any Thing therein contained.

Bail.

1. In
what
Caſes al-
lowed.

AT Common Law, Bail was allowed for any Offences except Murder; but now by the Stat. *W. 1. cap. 15.* 'tis directed where it ſhall be taken, and where not, which ſeems to be a Rule to this Day, becauſe the Statute *1 & 2 Phil. & Mar. cap. 13.* which gives Juſtices of Peace Power to Bail, hath Relation to this very Statute. *2 Inſt. 190.*

My Lord Coke tells us, That in thoſe Days Men were bail'd by the Writ *De homine replegiando*; and by the Writ *De odio & atia*; both which are now diſuſed.

Theſe Writs were directed to the Sheriff, under whoſe Cuſtody the Perſon was detained; and he was uſually replevied, that is, Pledges were taken for him in the County-Court in all Caſes, except for the Death of a Man, and except a Perſon committed by the Perſonal Command of the Queen, tho' the Commitment ſhould be unlawful; a Perſon committed by the Judge for any Cauſe proper to his Judicature, or for the Foreſt, in theſe Caſes the Sheriff was not to intermeddle in his Court, but the proper Remedy was by a *Habeas Corpus*, and Juſtice was done to the Party in the Great Courts at *Westminster*.

Bail.

Now the Reason why Bail was taken in all other Cases, was because *Stabat indifferenter* upon a bare Accusation, whether the Party was guilty or not; and therefore by that Statute, a Person outlawed was not to be bailed, because he is attainted in Law; but if upon the *Capias Uslegatum* he pleads a *Misnomer*, or alledge any Error in the Proceedings, he might be bail'd.

A Person abjuring, is attainted by his own Confession; Approvers confess the Felony to be actually done by themselves; a Person taken with the Thing stolen: In all these Cases, *non Stabat indifferenter*, nor for breaking a Prison, for it may be presum'd that an innocent Man will not do it. Notorious Felons; he that is accused by an Approver; one who sets an House on Fire, Counterfeiting Money, both which were Offences at Common-Law; and so was Counterfeiting the Great Seal, a Person excommunicate, for anciently Men were excommunicated only for Heresies, and not for Petty Offences; and if the Bishop certified the Excommunication into the *Chancery*, and the Party was taken upon the *Capias*, he was not to be bailed, unless he gave Caution *Parere Mandatis Ecclesie*: One guilty of an open and manifest Offence, and for Treason. All these were exempted from Bail by this Statute, but might be bailed in B. R.

Bail refused, where the Person isailable by Law, is a Misdemeanor, and finable. *H. P. C. 97. Styles 181.*

{ To Accessaries thereunto, before and after the Offence, until the Principal is convicted.
Dalt. 381.

{ Aiding Felons, suspected to be done, and not if it be actually done; but it must be by two Justices, *Quorum unus*, and they must be both present when they bail him, and they must take the Examination in Writing, which, together with the Recognizance entered into by the Witnesses to prosecute, must be certified at next Assizes, attainted thereof by Outlawry: If he bring a Writ of Error, *B. R.* may Bail him. *H. P. C. 101.*

3 H. 7. c. 1.
1 & 2 Phil.
& Mar.
cap. 13.

{ If attainted in Felony.

{ In Marrentp.

{ Persons indicted thereof before the Sheriff, or under the Value of 12 *d.*

Bail.

In Man-
slaughter.

This isailable, by the Statute 1 & 2 Phil. & Mar. cap. 13. by two Justices, *Quorum unus*, who must be present when they take the Bail, and it must be after Examination; but Man- slaughter is notailable if the Fact is con- fessed, or 'tis certainly known that he kil- led the Person, for it must stand *indifferent* if Bail is allowed; and therefore if it be found Manslaughter upon the Coroner's In- quest, tho' no Indictment is preferr'd, King's- Bench would not bail, for the Statute saith, That Bail shall be allowed in Manslaughter where the Party isailable by Law; which implies, that 'tis not to be allowed in all Cases. 1 Rol. Rep. 268. *Poin's Case*.

But of late some Doubts have been made, Whether a Man can be lawfully bailed for Manslaughter? Tho' my Lord *Hales* tells us, if it be a *Non liquet*, whether the Party accused did the Fact, two Justices may bail him.

Likewise, if a dangerous Blow is given, the Person may be bailed till the other is dead.

In Sessions
Process.

Commitment thereon upon an Indictment against any Penal Statute, by which Bail is not prohibited, may be bailed by two Ju- stices, *Quorum unus*.

Against the Party to appear upon an Indict- ment for a Trespass, one Justice may bail. *Dalt.* 382.

In Trespas-
ses.

Where Life or Limb is not in Danger after an Indictment and Process thereon, the Par- ty may be bailed by two Justices, *Quorum unus*. H. P. C. 100.

2. Bail
taken a-
way by
Sta-
tutes.

Accessaries. — In Treason, *per Stat. W. 1. cap. 15.*

Abjuring { The Realm, because they are guilty by their own Confession. *W. 1.*

Accountants, { Found in Arrears before Auditors, till Satis- faction made.

Ale-house-keepers, { Without Licence, the second Offence being Commitment to the House of Correction for a Month, suffering Tippling contrary to 1 Jac. cap. 9.

Appeals. — Of Death, notailable. H. P. C. 103.

- Approver. { These are Men who have commited Felony, and confess it; but this doth not concern Justices of Peace, any otherwise than to take his Confession and commit him, and send his Warrant for those accused. *W. 1. cap. 15.*
- Armour. { Persons riding armed, contrary to the Statute of *Northampton*, committed by Justices, are notailable; concealed by a Recusant convict, or disturbing the Delivery of it, one Justice may commit for three Months without Bail.
- Arrest, { Procured in the Name of another; convicted thereof, is to be imprison'd 6 Months.
- Bastards. { Father or Mother, not performing Justices Order: Mother to House of Correction for first Offence for a Year.
- Breakers — Of Prisons. *W. 1. cap. 15.*
- Bridges. { Surveyors and Collectors of Money for repairing them refusing to account. *22 H. 8. cap. 5.*
- Burning — Houses. *W. 1. cap. 15.*
- Church. { See Recusants.
Refusing to be Overseers thereof.
- Cloth. { Convicted for making deceitful Cloth, if the Party hath not wherewith to be distrained. *Dalt. 385.*
- Coining — False Money. *W. 1. cap. 15.*
- Commission { Of Rebellion out of *Chancery*; Person taken thereon. *Dalt. 382.*
- Conies. { Killing them in enclosed Grounds, 3 Months Imprisonment. *3 Jac. c. 13. 22, 23 Car. 2. cap. 25.*
- Constables, { Neglecting to levy Forfeitures for Abuses in Ale-houses, and not having any Thing of their own upon which to distrain 40 s. for their Neglect.
Neglecting to whip Trespassers in *Orchards* and *Woods*, by the Command of the Justices.
- Counterfeiting — Great Seal, &c. *W. 1. cap. 15.*
- Deer. { Killing and Hunting, contrary to Stat. *5 Eliz. 2. cap. 21.* committed for 3 Months.
Pulling down Pales in the Night, where Red or Fallow *Deer* are enclosed, 3 Months Imprisonment. *3 & 4 W. & M. cap. 10.*
- Dogs. — See Hunting.
- Druggers — Convicted of using Logwood.
- Engrossers { Forfeit 20 s. for each Offence, or to be committed for two Months.

- Excommunicate Persons } Taken by the Capias. *Dalt.* 316. *Will.* 1. *cap.* 15.
- Felons, } Notorious, *viz.* Those who are taken with Stolen Goods. *Will.* 1. *cap.* 15.
 } Those who are taken freshly by Hue-and-Cry, *H. P. C.* 101.
- Felony } Actually done, tho' it doth not appear that the Accused is guilty. *H. P. C.* 98. Attainted or convicted thereof by Confession or Indictment. Acquitted within a Year. Not to be bailed but at Discretion. That an Appeal may be had against him, 3 *H. 7. cap.* 1. *H. P. C.* 103. *W. 1. cap.* 15.
- Feasants. — See Partridges.
- Fish. } Destroyers of Ponds, 3 Months Imprisonment, and good Behaviour for 7 Years.
- Forgers } Of Deeds, Wills, or Writings sealed, or Court Rolls, and those who assent to it; those who publish it knowingly, *viz.* Imprisonment after Conviction for Life, where any Man's Estate of Inheritance might have been defeated.
- Forestallers, } Forfeit 20 s. for each Offence, or to be committed for two Months.
- Fowl. } Shooting at, or destroying Duck, Feasant Hern, Mallard, Partridge, Pidgeon or Teal, by Persons unqualified, *viz.* not having Estate of Inheritance, or for Life, in their own or Wife's Right, of 100 l. *per Ann.* or Lease of 99 Years of 150 l. *per Ann.* 22 & 23 *Car. 2. cap.* 25. Commitment for three Months, unless pay 20 s. for every Fowl to the Use of the Poor.
- Fraudulent Conveyances. } The Parties.
 } Those who put them in Suit. } Commitment for half a Year after Conviction.
 } Those who assign Lands or Goods so to them convey'd, knowing thereof.
- Gaming. } Those who keep such Houses.
 } Those who play at unlawful Games; Commitment, till they find Sureties not to offend again.
- Guns — See *antea* Fowl.

1. Those who shoot, kill or destroy them.
Tracing them, or Coursing them in the Snow.
Taking them in any Engine; Commitment
for 3 Months, unless he pay 20 s. for every
Hare to the Use of the Poor.
- Hares. 2. Keeping Greyhound, or Dogs for Cour-
sing Hares, unless he have 100 l. a Lease for
Life of 30 l. *per Ann.* or be worth 200 l. in
Goods; Commitment for 3 Months, unless
he pay 40 s. to Church-Wardens for the
Use of the Poor. 1 *Jac. cap. 27.*
- Hatters, Taking above two Apprentices, or one for
less than 7 Years; Commitment for one
Month, 8 *Eliz. cap. 11.*
- Hawks, Taking them or their Eggs out of the
Grounds of another; 3 Months Imprison-
ment upon Conviction, and then to find
Sureties for good Behaviour for 7 Years, or to
remain in Prison till they find such Sureties.
- Hawking, Between 1 *July*, and 31 *August*; Commitment
for one Month, unless he pay 40 s. for every
Hawking, and 20 s. for every Pheasant or
Partridge kill'd. 7 *Jac. cap. 11.*
- Highways, Not paying the Forfeitures collected for re-
pairing or amending them; Commitment
till paid.
- Hunting, Clergy-Man, not having } Keeping Dogs to
10 l. *per Annum.* } hunt, convicted at
Lay-Man, not having } Sessions; commit-
40 s. *per Annum.* } ted for a Year.
- Those who keep Greyhounds, not having
sufficient Living, being convicted before
two Justices; Commitment for 3 Months,
unless he pay 40 s. 1 *Jac. cap. 27.*
And killing Deer and Conies in enclosed
Grounds; Commitment for 3 Months.
- Inn-keepers, Who shall not sell Hay, Oats, Beans, Pro-
vender, or other Victuals for Man or Beast,
for reasonable Gain; convicted the second
Time; Commitment for one Month, 21 *Jac.*
cap. 21.
- Labourers, Going from Work before finish'd; Commit-
ment for a Month.
- Masters, Giving more Wages than assess'd by the Ju-
stices; Commitment for 10 Days.
- In Man- After the Confession of the Offender, 2 *Inst.* 187.
slaughter. *Se defendendo*, not bailable by Justices of Peace,
but B. R. may bail him. *H. P. C.* 99. 161.

- Not bailable at Common Law, yet it hath been allowed by B. R. and adjudged, That the Statute of *W. 1. cap. 15.* should receive a favourable Construction, according to the Discretion of the Judges, and as the Circumstances of the Case require. *Latch. 12.*
- And therefore one *Andrews* being outlaw'd for Murder, did 14 Years afterwards bring a Writ of Error, and was bailed. *Stiles 94.*
- In Murder** } So Two were committed upon Suspicion of Murder, and when those who actually had done it confessed at their Execution, the other who were imprison'd were bailed. *Stiles 96.*
- 'tis Corpus pro Corpore.* } Acquitted thereof upon an Indictment, not to be bailed till after a Year a Day, that the Party may bring his Appeal. 3 *H. 7. cap. 1.*
- Muster.** } Those who absent, or who do not bring the best Furniture; Commitment for 10 Days.
- Oath.** } Those who refuse to take the Oath of Allegiance, being tender'd; Commitment till the next Assizes or Sessions, being above the Age of 18 Years.
- Partridge** — See Fowl.
- Pidgeon.** — See Fowl.
- Perjury.** } In any Court of Record, or Court Baron; Commitment for 6 Months.
- Physicians,** } Committed by President and College in *London*, must continue there, till discharged by President and College.
- Refusing to pay Rates for them, and no Distress to be taken: Commitment till paid, and Charges.
- Poor. Things relating to them.** } Overseers refusing to make their Account, or to pay over to new Overseers what remains in their Hands; Commitment till perform'd.
- Negligent in their Office, forfeits 20 s. and having no Distress to be taken, Commitment till Forfeiture paid.
- Parents refusing to relieve Children, as the Justice shall assess in Sessions, Forfeiture 20 s. per Month; and having no Distress to be taken, Commitment till paid.

Common, &c. Minister, if beneficed, depraving it; Commitment for 6 Months.

Second Offence; Commitment for a Year.

Third Offence; Commitment for Life.

If not beneficed, first Offence, Commitment for 6 Months; but by 1 Eliz. cap. 2. 'tis for 12 Months.

Second Offence; for Life.

Any other Person forfeits 100 Marks to the King; and if not paid within 6 Weeks after Conviction, Commitment for a Year.

Second Offence, 400 Marks; and if not paid *ut supra*, Commitment for a Year.

Third Offence; Imprisonment during Life.

Being present at any other Form; First Offence, Commitment for 6 Months: Second Offence, 12 Months; Third Offence, for Life.

Disturbers of them in the Time of their Sermon, and such who aid or procure such Disturbance; they who rescue the Offender, may be committed by one Justice upon a bare Accusation; 6 Days afterwards, two Justices having examined the Fact, may commit him for three Month, &c. 1 Mar. cap. 3.

Suspected to be a Jesuit, Seminary or Priest, and being examined, refuseth to answer; Commitment till he answer directly.

Suspected of Recusancy, and refusing to answer a Justice upon Oath, whether so or not, may commit till next Sessions or Assizes.

A Woman Recusant convict, and not conforming, being committed, must remain there till she conform.

Woman or Child, under 21, going beyond Sea without Licence, the Master of the Ship must be committed for a Year.

Refusing to discover their Armour, or they or any other disturbing the Delivery of it, to Persons who have Authority to seize; Commitment for three Months. 3 Jac. cap. 5.

1. Impugning the Queen's Authority in Ecclesiastical Causes. 2. Perswading others to it, or from coming to Church. 3. Meeting at Conventicles, under Colour of Religion.

- gion. 4. Or perswading others to meet there. Commitment till they conform and make an open Submission and Declaration of their Conformity.
- Absenting from Church on *Sunday*, and no Distress to be had; Commitment till Forfeiture is paid.
- Above the Age of 16, and absenting for a Month; Forfeiture 20 s. per Month, or be committed till paid. 23 *Eliz. c. 1.*
- Incorrigible, being committed, must continue in Custody till next Sessions.
- Rogues.** Being a Recusant, or not allowed by the Ordinary; and being convicted, Commitment for a Year.
- Keeping him, or any other Servant in the House, and not coming to Church for a Month, the Master of such House forfeits 10 l. per Month.
- School-Masters.** Teaching Youth without Licence, (*ut prius*) for the first Offence, Commitment for three Months; and for the second Offence, like Commitment, and forfeits 5 l. per 13 & 14 *Car. 2. cap. 4.*
- Seal,** Great, counterfeiting thereof. *W. 1. cap. 15.*
- Departing before their Term is ended, unless for a Cause to be allowed by a Justice of Peace, or at the End of the Term, without a Quarter's Warning before two Witnesses, may be committed till he give Security to serve.
- Servants. Vide** Refusing to serve for the Wages appointed by Justices, or having promised to serve, and refuse; Commitment until he shall be bound to serve.
- Servants and Apprentices.** Taking more Wages than set by the Justices; Commitment for 21 Days.
- Women above 12, and under 40, and unmarried, refusing to serve, may be committed till they will be bound to serve. 5 *Eliz. cap. 4.*

Not elected Knights of the Shire in their full County between the Hours of Eight and Eleven in the Morning, or returning them contrary to the Statute; Commitment for a Year.

heriffs, Making any Warrant for an Arrest, without the Original Proceſs or Writ; committed till he pay 10*l.* to the Parry grieved, and his Coſts, and Damages, and 20*l.* to the Queen.

In another Man's Name, there being no such Person, or without the Consent of the Person, convicted by Two Witnesses, Commitment for Two Months, paying treble Costs and Damages to the Party grieved, 8 *Eliz. cap. 2.*

Of selling Horse or Mare without Licence, forfeits them, and 40 l. for each, &c. between Queen and Prosecutor, and Commitment for a Year. 1 Ed. 6. cap. 9.

Of Sheep alive, he that brings, delivers, sends, receives, or takes them, forfeits all his Goods, and must have his Hand cut off in some open Market, and be committed for a Year; the Second Offence is Felony. 8 Eliz. cap. 3.

- And others, who shall take upon them to hurt another, tho' 'tis not done :

Or to provoke Love :

Or shall hurt any Cattle :

Commitment for a Year after Conviction.
- 1 Jac. 22.

Taking them unmarried, and under Sixteen, out of the Possession of their Father or Mother, and against their Wills; or out of the Custody of the Person to whom the Father hath devis'd it, except such Taking shall be in the Behalf of the Master or Mistress of such Child, or Guardian in Socage; two Years Imprisonment.

If deflower such Child, or contract Marriage without the Consent of the Father; and if he is dead, then of the Mother; convicted thereof, Commitment for five Years, or pay such Fine as B. R. shall assess, to be divided between the Queen and Prosecutor. 4 & 5 Phil. & Mar. cap. 8.

At Common Law, the Sheriff or Constable might have
 iled one suspected of Felony ; but now that Power is giv-
 n to Justices of Peace by particular Statutes, viz. by 1 R. 2.
 2. 3. 3 H. 7. cap. 3. 1 & 2 Phil. & Mar. cap. 13.

The Sureties and Sum are left to the Discretion of the Judges, where no Sum certain is appointed by Law: But if the Crime

By whom,
and in
what Sum.
Two Justi-
ces.

Crime be Suspicion of Felony, they must take very sufficient Persons for the Appearance of the Party, and bind them in a good Sum.

And if the Justices, at any Time before Appearance, shall think the Sureties taken not sufficient, they may compel the Party to give better, or commit him.

The Sureties likewise may bring the Offender before the Justices of Peace, and desire to be discharged upon his Commitment, if they are of Opinion that he will run away.

The Justices may examine the Sureties upon Oath. *Dalt.* 375.

Justices may bail any Prisoner committed for an Offence of which they are competent Judges, and therefore they cannot bail Persons arrested by Writs out of the Courts at Westminster in any Personal Action; for they cannot hear and determine such Actions.

Poph. 96.

And if they bail any Person who is not bailable by Law, they ought to be fined. See *Stat. W. 1. cap. 15.*

A Recognizance where Bail is taken for a Felon.

Suffex ff. **M**emorandum, quod 24 die Septemb' Anno Regni, &c. venerunt coram nobis R. B. & H. P. duobus Justiciariis dictae Dom' Regina ad pacem in Com' praed' conservand' assignas' necnon, &c. apud L. in Com' praedict' T. P. & W. A. de, &c. in Com' praed' Teoman, & ceperunt in Ballium usque ad proximam Gaule deliberation' in dicto Com' tenend' quendam J. O. de, &c. Labourer, captum & detentum * pro suspitione cujusdam Feloniae per ipsum, ut dicitur, perpetrat' & assumpser' super se scil' praed' T. P. & W. A. separatim sub pana 50l. bona & legalis monetae Angliae, & praedict' J. O. assumpsit pro seipso in Centum Libris similis monetae de bonis & catallis, terris & tenementis eorum & cujuslibet eorum ad opus dictae Dominae Reginae hereda' & successorum suorum levand' si praefat' J. O. ad eandem proximam Gaulam deliberation' non personaliter comparebit coram Justiciariis dictae Dom' Regine ad dictam Gaule deliberation' assignat' ad standum recte de Felonia praedict' & ad respondend' dict' Dom' Regine tunc & ibidem de super omnibus qua illi obijciuntur. Dat. sub sigillis nostris, &c.

* If in Prison, say, In Prisona.

Bailiff, See Extortion.

Baker, See Weights and Measures.

Bankrupt.

Bankrupt.

Fraudulently conveying his Lands or Goods, or any Estate to the Value of 20*l.* to delay his Creditor, and not discovering or delivering of a Particular thereof (if he can) to the Commissioners; or shew some accidental Cause by which he is disabled from paying his Debts; shall be indicted at the Sessions of that County where he became Bankrupt, and upon Conviction shall be set in the Pillory two Hours, and have one of his Ears nailed to it, and cut off. 21 *Jac. cap. 19.*

Bargain and Sale, See Inrolment.

Bark of Trees, See Leacher.

Barretry.

This is an Offence at Common Law, for which a Man may be indicted at the Sessions; and if such an Indictment conclude *contra formam Statuti*, 'tis not void, though there is no Statute which makes it an Offence. For the Act 34 *Ed. 3. cap. 1.* gives the Justices of Peace Power to punish a Barretor, but doth not create the Offence, which is of a mixed Nature, of which the Justices of Peace cannot hold Plea by Vertue of the Commission of the Peace, but by another Power which extends to Trespass. Cro. Eliz. 148.

1. A Barretor is a common Stirrer up, or Maintainer of Suits or Quarrels in Courts, or in the County. 8 *Rep. 37.*

As where many feigned and unjust Actions or Suits are maliciously stirred up in any Court of Record, or inferior Court; or if any Man of himself, or in his own Causes, is a common Oppressor of his Neighbours by such Suits.

Disturbers of Peace, any common Quarrellers, Fighters, or those that make Affrays.

2. Those who by Force or Fraud detain the Possessions of another which are in Controversie, be it either Houses, Lands or Goods.

3. Those who invent or spread abroad false Reports, by Reason whereof many Differences arise among Neighbours.

4. Any Common Disturber of the Peace.

These Men any Justice may bind to the Peace or good Behaviour, or they may be indicted at Sessions, and fined.

In
Courts.
In the
County.

The

Indictments.

Communis Oppressor & Perturbator Pacis, was held too general, 1 Mod. 288.
Cro. Eliz. 195.
Palm. 450.
Latch. 194.
Godb. 383.

2 Cro. 404.

The Words *Communis Barreftator*, were formerly held necessary to be inserted in every Indictment for *Barretry*; and therefore to alledge, That the Defendant is a Promoter of Suits, or that he is *communis vicinarum Oppressor*, is not sufficient without those Words. 1 Sid. 282.

But it hath lately been ruled otherwise; for an Indictment against the Defendant, for that he is *Quotidianus perturbator Pacis*, was not quashed, tho' the same Exception was taken to it, viz. the Omission of the Word *Barreftator*. Hill. 8 Wil. B. R. Rex vers. Gregory.

It was formerly held, That it was not necessary to set forth in what Place the Offender was a Barretor; because a Man who is guilty of this Offence, is a common Barretor every where: But of late 'tis ruled otherwise; for if 'tis traversed, and no Place alledged in the Indictment, there cannot be any *Venire facias* awarded to try the Fact.

And now I have mentioned a *Venire facias*, I must also take Notice, that 'tis not necessary it should be returnable at the next Sessions after the Party is indicted; for if he appear, he may be tried at the same Sessions.

It seems essential to conclude the Indictment with the Words, *Contra Pacem*, for that he is *Communis Barreftator & Discordiarum inter Vicinos Seminator, & Pacis Regine Perturbator in magnum contemptum Domine Regine, & in malum exemplum aliorum Delinquentium*: All this is not sufficient, if the Words *Contra Pacem* are omitted. 2 Cro. 527. 2 Roll. Abr. 82.

But for other small Omissions or Surplusage, the Court of B. R. seldom quash an Indictment of *Barretry*; as where one was convicted and fined 100 l. & *ulterius ordinat' fuit*, That he be of the Good Behaviour, and doth not say how long; this was held to be no Part of the Judgment, 1 Sid. 214.

Godb. 157. Yet where the Fact was said to be *Anno Regni Dom' nostre*, leaving out the Word *Regin'*, the Indictment was quashed.

The Indictment.

Suffex ss. JUR. &c. quod J. O. de H. in Com' præd' Teoman, 20 die Septemb' An' Regni, &c. apud L. in Com' præd' fuit, & adhuc est communis Barreftator, & assiduus Perturbator Pacis diſſe Domine Regin' necnon die, anno & loco ſupradict' fuit, & adhuc est communis ac turbulentus Calumniator, Conviciator, Pugnator & licium inter Vicinos ſuos Seminator, adeo ut diverſas lites & jurgia adtunc & ibidem & alibi in Com' præd' inter diverſos Domine Regin' ſubditos movit & procuravit in magnum contemptum Domine Regine, & in malum exemplum aliorum delinquentium, ac contra Pacem diſſe Domine Regine Coran', &c.

This Indictment is general, and 'tis almost impossible to make any Defence to it, without a Rule of Court to help the Defendant, viz. That the Prosecutor shall give him Notice some Time before the Trial, what Suits he intends to give in Evidence, for otherwise he cannot be prepared to defend himself against that general Allegation, viz. *Diversas lites movet.*

One *Toplin*, an Attorney, was indicted for Barrettry, but had the good Luck to be acquitted, yet he was not discharged; for the Book tells us, That he appearing to the Court to be a notable Knave, was bound to his Good Behaviour.

Latch. 7.

I have been a little the larger on this Title, because I find 'tis but just mentioned by my Lord *Hales* in his Pleas of the Crown, 142.

Bastardy.

THIS is an Offence against the Spiritual and Common Law, and punishable in both Courts.

He may be bound to the Good Behaviour by one Justice, but this is by Vertue of the Power which he hath at Common Law, as *Conservator Pacis*, to punish Incontinency; it ought to be proved by the Oath of a Woman with Child, and then the Justice may send the Warrant for the reputed Father.

1. What is to be done with the putative Father before the Child is born.

A Warrant against the putative Father.

To the Constable, &c.

WHereas upon the Examination of *A. P.* single Woman, taken upon Oath before me this Day, it appeareth that she is now with Child; which Child, when it shall be born, will be a Bastard, and may then be chargeable to the Parish of, &c. And whereas she the said *A. P.* hath confessed, that *J. L.* of, &c. did beget the said Child on her Body, and hath before me charged him with the same: These are therefore in Her Majesty's Name to command you, or some of you, to apprehend the said *J. L.* and to bring him before me, or some other of Her Majesty's Justices of the Peace for this County, to answer what is laid to his Charge as aforesaid: And hereof fail not. Given, &c.

One Justice.

When the Person appeareth before the Justice, then he must enter into a Recognizance with Sureties for his Appearance at the

the next Sessions, and so he may be continued upon it till the Child is born. The Condition whereof is, &c.

The Condition of a Recognizance for the Appearance of the putative Father at the Sessions before the Child is born.

THE Condition of this Recognizance is such, That whereas the above-bounden J. L. is charged by A. P. of, &c. single Woman, That he had the carnal Knowledge of her Body at several Times, and that the said A. P. is now with Child by him the said J. L. which, when born, will be a Bastard: If therefore the said J. L. shall personally appear before Her Majesty's Justices of the Peace at their next General Quarter-Sessions of the Peace to be holden for the East Part of the said County of *Suffex* at L. then and there to abide and receive what shall be enjoined by the said Court concerning the Premises, and in the mean Time to be of the Good Behaviour; That then, &c.

If he refuse to enter into the Recognizance, then he may be committed.

The Mittimus.

To the Keeper of, &c.

Suffex ss. I Do herewith fend you the Body of J. L. of, &c. Yeoman, who was brought before me this present Day, and charged by A. P. of, &c. to have gotten her with Child; which Child, when born, will be a Bastard: He the said J. L. having refused before me to find * Security for his Appearance at the next General Quarter-Sessions of the Peace to be held for this County, to answer unto the said Charge: These are therefore to require you to receive the said J. L. into your Custody, and him safely to keep in the common Gaol, until he shall be from thence discharged by due Course of Law: And hereof fail not. Given under my Hand and Seal, &c.

* If for Good Behaviour, then say, To find Sureties for his Good Behaviour, and to appear at the next, &c.

Order.

If he enter into such Recognizance as aforesaid, nothing more is to be done till the Child is born, and then two Justices, *Quorum unus*, who are next the Place where 'tis born, may examine the Matter, and order three Things, viz. 1. The Punishment of the Father and Mother. 2. The Relief of the Parish in Part, or in all. 3. They may charge the Parents with Payment of Money weekly for Relief of the Child.

If the two Justices cannot agree in making their Order, then it may be referred to the Sessions to be re-examined; but it must be again heard before the two Justices, with the Direction of the Court, because the Sessions cannot make an Original Order in Bastardy.

Before they make their Order, 'tis usual for them to send their Warrant to bring the reputed Father and Mother before them, with such Witnesses as they shall think fit.

The Form of the Warrant.

To the Constable, &c.

Suff. ff. **W** Hereas *A. P.* of, &c. hath lately been deliver'd of a Bastard-child, yet living, and likely to be chargeable to the Parish of, &c. And whereas the said *A. P.* hath charged *J. L.* of, &c. to have begotten the said Child on her Body: These are therefore in Her Majesty's Name to command you to bring the said *J. L.* before us on *Wednesday* the 25th Day of this Instant *September*, at Ten of the Clock in the Morning of the same Day, at the House of, &c. to be examined by us concerning the Premisses; and that you give Notice to the said *A. P.* of the Time and Place aforesaid, that she may be there also present; and that you likewise give Notice to *M. A.* of, &c. *S. W.* of, &c. that they are required to appear at the Time and Place aforesaid, to testify what they know concerning the Premisses, to the End that such Order may be made therein as to Justice doth appertain; and that you certify unto us what you have done in the Execution of this Precept at the Time and Place aforesaid. Given under our Hands and Seals, &c.

Two Justices, *Quorum unus.*

A Bastard of a Person able to keep it, and not likely to be chargeable to the Parish, is not within the Statute of 18 *Eliz.* *10. Car.* 436.

The Order.

Suff. ff. **T** HE Order of *H. P.* and *R. B.* Esqs; two of Her Majesty's Justices of the Peace for the said County; one whereof is of the *Quorum*, and both now residing within the Limits where the Parish-Church of *H.* in the County aforesaid, standeth, the 25th Day of *September*, in the Year of our Lord 1701. according to the Form of the Statute in that Case made and provided, concerning a Male Bastard-child lately born in the said Parish of *H.* of the Body of *A. P.* of, &c. single Woman; which Bastard-child, ever since its Birth, hath been, and is still chargeable to the said Parish, and is likely so to continue.

Order.

First, Upon Examination of the Cause and Circumstances of the Premisses taken upon Oath before us, and due Consideration thereof been likewise had by us, we do adjudge *J. L.* of, &c. Yeoman, to be the Putative Father of the said Bastard-child; and we do also order, That as well for the Relief of the

said

* It is a
Question,
whether
the Justices
have Power
to order a
Sum in
Gross.
1 Vent. 336.

said Parish of, &c. in Part, as also for the Provision and Maintenance of the said Bastard-child, that he the said J. L. shall weekly, and every Week, from the Time of the Birth of the said Child, and so long as the same shall be chargeable to the said Parish of, &c. and until the said Child shall attain the Age of Twelve Years, pay or cause to be paid unto the Church-wardens or Overseers of the Poor of the Parish of, &c. for the Time being, the Sum of 2*s.* for and towards the Maintenance of the said Child; and shall likewise pay, or cause to be paid unto the Church-wardens or Overseers of the Poor of the Parish aforesaid for the Time being, the * Sum of 4*l.* within three Months after the said Bastard-child shall arrive at his Age of Twelve Years, for and towards the putting forth the said Child to be an Apprentice. And farther, We do hereby order, That the said A. P. shall every Week, for so long Time thereof as the said Child shall be chargeable as aforesaid, and she shall not keep the same, pay or cause to be paid unto the Church-wardens or Overseers of the Poor of the Parish of, &c. for the Time being, Six-pence for and towards the farther Maintenance of the said Child.

And Lastly, We order, That the said J. L. do, upon Notice of this our Order, forthwith give sufficient Security to the Church-wardens and Overseers of the Poor of the Parish of, &c. well and truly to perform so much thereof as doth concern the said J. L. and which on his Part is hereby ordered to be done and performed. In Witness whereof, &c.

If Notice should not be given to the putative Father till the Sessions is past after the Order made, so that the Party is deprived of the Benefit of his Appeal; yet B. R. would not quash the Order, but referred it to the Justices in Sessions to discharge or affirm it. *Stiles* 326.

This Order being a Judgment upon the Parties, is not to be respited without paying what is ordered, if it be a Sum in Gross, as 'tis usual, besides weekly Payments.

Sid. 363.

And none but the Justices have Authority to declare who is the reputed Father; but if they are unreasonable in the Sum allowed for the Relief of the Parish, B. R. may reform it; and if they order 2*d.* per Week for the Maintenance of a Child.

And regularly these Things are required to make a good Order:

1. It must be made by Two Justices, *Quorum unus.*
2. They must be next the Place where the Parish is, which is to be relieved.
3. It must be made at a private Meeting, and not at Sessions.
4. It must be concerning a Bastard-child, and so expressed, and likely to be chargeable, &c. It must appear how long the Father shall maintain it. *Stiles* 154. 1 Vent. 37.
5. The

Stiles 154.

5. The Place of Birth must be alledged, for otherwise the Child may be born where the Two Justices have no Jurisdiction; and it must likewise appear, that it was born in the Parish to which Relief is ordered. *Stiles 14. 368.*

6. It must be made pursuant to the Act, viz. to relieve the Parish in Part or in all, and for the Relief of the Child by a Weekly Maintenance. In some Orders, the Word Education is inserted, but that hath been excepted against.

7. It must directly affirm who is the reputed Father. *Sid. 363.*

But an Order is ill, if it doth not appear that one of the Justices is of the Quorum; if the Money is ordered to be paid Weekly, instead of Monthly; if 'tis ordered to be paid till the Child is 14 Years old, when it ought to be so long as it shall be chargeable to the Parish; if the reputed Father is ordered to give such Security as the Church-wardens shall think fit.

So if the Order is, that one shall contribute half the Charges, because he suffered a Soldier to get his Servant with Child.

As to the Third Rule above-mentioned, the Statute of 3 Car. cap. 4. (by which divers Acts are continued, repealed, and some made perpetual) gave the Sessions Power to examine all Things concerning Bastardy, which the Two Justices had before; but what was enacted by that Law, was to continue only (in this Case) to the next Sessions of Parliament, which being long since expired, the Two Justices have now the Original Jurisdiction again, and their Order shall bind till avoided by Appeal. *1 Vent. 175. 1 Mod. 287.*

Now upon the Appeal, the Sessions must either affirm or quash the Order made by the Two Justices: They cannot make a new one; neither, after 'tis reversed, can any other Sessions make another Order, because upon such Reversal the Statute of 18 Eliz. is satisfied, and no other Justices can intermeddle with it; and therefore where an Order is discharged upon an Appeal, the Party who was charged is absolutely acquitted. *1 Vent. 59.*

An Order was made, to pay such Charges as the Parish had been at; and did not say, that the Child was likely to be chargeable, &c. yet it was held good. *1 Vent. 37.*

'Tis true, no Time is limited by the Statute, and therefore Exceptions have been taken to Orders to pay so much Week for a certain Number of Years; but this Exception hath been disallowed, especially when 'tis also expressed in the Order for so long Time as the Child is a Charge, &c.

If the Child dies after the Order is made, and before the next Sessions, and no Security be given to perform the Order; then when the Party appears at Sessions, they may

Sid. 222.

Stiles 207.

2 Bulf. 341.

Jones 330.

Mich. 8. Will.

order him to pay the Charges, upon Proof of serving the Order.

But if Security hath been given, then the Sessions have no further Power; but the Bond must be put in Suit, if the Condition is not performed.

The Bond must be made to the Church-wardens, &c. and their Successors.

The Condition of the Bond.

* If the Bond is given before the Birth of the Child, then say, *viz.* Whereas, &c. was lately gotten with Child, being then and still unmarried, to which Child, &c.

THE Condition of this Obligation is such, That whereas *A. P.* of, &c. hath lately been * delivered of a Female Bastard-Child within the Parish of, &c. of which Child the above-bounden *J. L.* stands charged according to Law to be the reputed Father: If therefore the said *J. L.* his Heirs, Executors, or Administrators, or any of them, do and shall from Time to Time, and at all Times hereafter, acquit, discharge, and save harmless, as well the above-named *T. H.* and *F. C.* Church-wardens of the Parish of, &c. aforesaid, and their Successors for the Time being, as also the Inhabitants and Parishioners of the said Parish, of and from all Costs, Charges, and Troubles whatsoever, for or by reason of the Birth, Maintenance, Nourishing, and Bringing up, the said Child, and of and from all other Suits, Charges, Troubles and Demands whatsoever, touching or concerning the same; then this Obligation to be void, otherwise to remain in full Force and Vertue.

If he will not give such Security as aforesaid, but will appeal from the said Order to the next Sessions, then he must enter into a Recognizance for his Appearance there. The Condition whereof is:

The Condition of a Recognizance to appear at Sessions after the Order made.

THE Condition of this Recognizance is such, That if the above-bounden *J. L.* shall personally appear at the next General Quarter-Sessions of the Peace to be holden at *L.* for the East Part of the County of *Suffex*, and abide such Order as shall be then made by the Court concerning a Bastard-Child now born of the Body of *A. P.* of, &c. whereof he the said *J. L.* is charged and accused to be the reputed Father, if any such Order shall be then made; and in Default of such Order to be then made or taken by the said Court, if the said *J. L.* do and shall perform the Order therein already made by *H. P.* and *A. B.* Two of her Majesty's

Justy's Justices of the Peace for the said County, that then,
&c.

But if upon Service of the Order, he refuses to enter into such Recognizance for his Appearance, or to give Security as aforesaid, then the Two Justices who made the Order may commit him.

*The Form of the Commitment for not obeying the
 Justices Order, &c.*

To the Constable of, *&c.* and to the Keeper of, *&c.*

Suff. x. ff. **V** Hereas by an Order made and subscribed by us on the 7th Day of October last, concerning a Female Bastard-Child, lately born of the Body of *A. P.* a single Woman, in the Parish of *H.* in the County aforesaid, and chargeable to the said Parish; we have adjudged *J. L.* of, *&c.* to be the reputed Father of the said Bastard-Child, according to the Form of the Statute in that Case made and provided; and amongst other Things in the said Order contained, we have ordered, That the said *J. L.* shall Weekly pay, or cause to be paid, to the Church-wardens or Overseers of the Poor of the Parish of, *&c.* the Sum of Two Shillings for the Maintenance of the said Child; and shall likewise pay unto them the Sum of Four Pounds within Three Months after the said Child shall attain her Age of Twelve Years, to put her to be an Apprentice; and likewise that the said *J. L.* do and shall give sufficient Security to them to perform the said Order. And whereas it hath been duly proved before us, that the said *J. L.* had Personal Notice thereof, but hath not hitherto performed the same, or given Security so to do, or entred into a Recognizance to appear at the next Sessions: These are therefore, in Her Majesty's Name, to command you to apprehend the said *J. L.* and to deliver him to the Keeper of the Gaol aforesaid, to be by him kept therein without Bail or Mainprise, except he shall give sufficient Security to perform the said Order, or enter into a Recognizance Personally to appear at the next General Quarter-Sessions of the Peace to be holden for the East Part of the said County of *Suff. x.* to abide such Order as the Court shall there take concerning the Premises, if any such Order shall be then made; and if not, then to abide and perform the Order already, as aforesaid; commanding also you the aforesaid Keeper of the said Gaol to receive the said *J. L.* into your Custody, and him safely to keep, according to the Purport of this Pre-

Two Justices, *Quorum unus.*

cept. Given under our Hands and Seals this Tenth Day of October, &c.

Corporal Punishment of reputed Father and Mother.

The Two Justices may inflict a Corporal Punishment upon the reputed Father, by Vertue of the Statute 18 Eliz. But this is not usually done but where he is very poor, and not of Ability to discharge the Parish.

A Warrant for the Punishment of the reputed Father by Whipping.

To the Constable, &c.

Two Justices, 2nd-
runt 111111.

Suffex ff. **W** Hereas A. P. of, &c. in the said County, single Woman, was lately delivered within the said Parish of a Female Bastard-Child, begotten and born out of lawful Matrimony; which Child is yet living, and chargeable to the said Parish, and is so likely to continue. And whereas, upon our Examination of the Cause and Circumstances according to the Statute in that Case made and provided, we have adjudged J. L. of, &c. to be the reputed Father of the said Bastard-Child. Now for the Punishment of the said J. L. we do hereby order and appoint you to strip, or cause him to be stripp'd naked from the Middle upward, and to tie or bind him to some Cart or Dungcote, and being so stripp'd and tied, to cause him to be drawn upon some Day between the Hours of Nine and Twelve in the Forenoon, from the House of, &c. to the, &c. and on the Way to be whipp'd in such Manner as is usual in such Cases; and you are with all convenient Speed to make known unto us what you have done concerning the Premises; and hereof fail not at your Perils. Given under our Hands and Seals, &c.

7 Jac. c. 4.

By the Statute of 7 Jac. the Justices of Peace may commit lewd Women to the House of Correction, who have Bastards that may be chargeable to the Parish, there to be punished and set to Work for a Year; and if they offend a second Time, not to be enlarged without giving Security to offend no more.

This is only in such Cases where they have been punished for the first Offence; for if a Woman hath a Bastard, and is not punished for it, and afterwards hath another, though this is the second Offence; yet she is not to be continued in Prison till she give Security not to offend any more.

348. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

But if the Woman will discharge the Parish, she cannot be punished by this Act; yet by Vertue of 18 Eliz. she may be punished by Whipping, as the reputed Father may be; and for this, see the last Warrant, *mutatis mutandis*.

A Mittimus of the Mother of a Bastard to the House of Correction.

To the Constable of, &c. and to the Keeper of the House of Correction for the said County, at L.

Suffex ss. **W**Hereas *A. P.* of, &c. hath lately been delivered in the said Parish of a Female Bastard-Child, yet living, and chargeable to the said Parish, and likely so to continue: These are therefore to command you the said Constable to apprehend the said *A. P.* and her safely to convey to the House of Correction afore said, and to deliver her to the Keeper thereof, together with this Precept; commanding also you the afore said Keeper to receive the said *A. P.* into your Custody, and there to punish her, and to set her on work for and during the Space of one whole Year next ensuing, according to the Form of the Statute in that Case made and provided; and hereof fail not at your respective Perils. Given under our Hands and Seals, &c.

The next Justices,
Quorum unus,
7 Jac. c. 4.

By this Precedent, you may see that she is not to be sent to the House of Correction till the Child is born, and the Woman well again; and that the Child must be living, and chargeable to the Parish.

A Warrant against the Mother for the second Offence.

To the Constable, &c. and to the Keeper of the House of Correction at L. for the County afore said.

Suffex ss. **W**Hereas *A. P.* of, &c. a lewd Woman, hath been formerly delivered of a Bastard-Child in the Parish of, &c. born of her Body out of lawful Matrimony, and chargeable to the said Parish: And whereas she hath again offended the second Time in the like Nature: These are therefore to command you the said Constable to take the said *A. P.* and her safely to convey to the afore said House of Correction, and there to deliver her to the Keeper thereof, together with this Precept; commanding also you the said Keeper to receive the said *A. P.* into your Custody, and there to punish her, and set her to work until she shall give good Security for her good Behaviour not to offend in the like

Two Justices,
Quorum unus.
7 Jac. c. 4.

Manner again; and hereof fail not at your respective Perils.
Given under our Hands and Seals, &c.

14 Car. 2.
cap. 12.

By the Statute of 14 Car. 2. the Church-wardens and Overseers of the Poor of any Parish where a Bastard-Child shall be born, may seize so much of the Goods, and receive so much of the Rents of the Lands of the reputed Father and lewd Mother, as shall be ordered by Two Justices; which Order must be confirmed at Sessions; and this is for and towards the Discharge of the Parish.

But they cannot sell the Goods by Vertue of the Order of the Two Justices: The Sessions must make an Order for that Purpose.

An Order for Relief of the Parish out of the Estate of the reputed Father.

To the Church-wardens and Overseers of the Poor of, &c.
and to every of them.

Two Justices,
Quorum unus.
14 Car. 2.
cap. 12.

Suffex. J. **W**Hereas it appeareth unto us, upon the Complaint of the Church-wardens and Overseers of the Poor of the Parish of, &c. that J. L. the reputed Father of a Bastard-Child lately born in the said Parish, is departed from his usual Place of Abode, and hath left the said Child upon the Charge of the aforesaid Parish, though he hath a sufficient Estate to charge and indemnify the same: These are therefore to require you to seize and take so much of the Goods and Chattels of the said J. L. and to receive so much of his Rents Yearly issuing out of his Lands, as will amount unto the Sum of, &c. which we do hereby appoint you to receive for and towards the Discharge of the said Parish, according to the Form of the Statute in that Case made and provided. Given under our Hands and Seals, &c.

The Punishment
of the Offenders for
negligent
Escape.

The Constable having a Warrant to apprehend the Father, and willingly or negligently suffering him to escape, one Justice may bind him over to the Sessions, and there he may be ordered to contribute towards the Maintenance of the Child, or may be fined.

So may any Person who shall perswade, procure, or convey away, the reputed Father, or who suffers the Mother to escape, or convey her away.

But this is not by Vertue of any of the Statutes made against Bastardy; 'tis only a discretionary Act in the Justices, which the *Conservators* had at Common Law.

My

My Lord Coke tells us, Forty Weeks, or Nine Months, accounting Thirty Days in each Month, is the *Legitimum Tempus*.

But *Anno 7 Jac.* in B. R. it was held, that the Husband dying the 23d of March, and his Widow being delivered the 5th of January following, which is 10 Days after the Forty Weeks, that the Child was Legitimate; in which Case the Physicians argued, that a perfect Birth may be at Seven Months, which is long before the Time of the proper Birth; and this may be occasioned by the Strength of the Mother; So likewise it may be deferred beyond its proper Time by Cold, hard Usage, Want of Necessaries, Infirmary of Body, or Passion of the Mind.

How long a Woman may go with Child.

2 Cro. 541. Palm. 9.

Sir Tho. Ridley, who was a Learned Man, in his Book of the Civil Law, which he dedicated to King James the First, tells us, That in one of the Institutions of *Justinian* it was held, That the Child of a Woman delivered Eleven Months after the Death of her Husband, was held Legitimate; and the Gloss upon the Constitution mentions a Widow at *Paris*, who was delivered Fourteen Months after her Husband's Death, and the Judges there held the Child to be Legitimate. But Forty Weeks, according to our Law, is the most usual Time.

Ridley's View of the Common Law.

An Indictment will lie against the Defendant for conspiring to charge another with a Bastard Child, for 'tis a Disgrace and an Injury to his Reputation.

Battery, See Assault.

Bawdy.

BY the ancient Laws of this Kingdom, there was no Difference in the Punishment of Fornication and Adultery, for both were Offences inquirable in Leets and Tourns, and punished by Fine and Imprisonment.

3 Inst. 205, 206.

The Book called *Domesday* is very particular in some of these Fines, and giveth an Account to whom they did belong, and the Sum in which the Offenders were fined.

In *Sussex*, an adulterous Person of either Sex was fined usually at 8 s. and 4 d. and that both in that Country and in *Kent*, the King was entitled to the Fine of the Man, and the Archbishop to that of the Woman.

Our Histories mention Eighteen Bawdy-Houses which were publickly known and allowed on the Bank-side in *South-*

work; these were reduced to Twelve by H. 7. and were afterwards suppressed by the Proclamation of his Son and Successor H. 8. in the 37th Year of his Reign.

But it was always held to be an infamous Offence to keep a Bawdy-house; and therefore formerly when any Man let a Lease of his House, there was an express Covenant inserted; That the Tenant should not entertain any lewd Women there.

And now at this Day, any Constable, upon Information that a Man and Woman are about to commit either of these Offences, or that they are gone to any lewd House, may, if he find them there together, carry them before a Justice of Peace without any Warrant, and the Justice may bind them to the good Behaviour. *Dal. 214.*

If a Man is indicted for frequenting a Bawdy-house, it must appear that he did know it to be such a House; and it must expressly be alledged in the Indictment, that 'tis a Bawdy-house; and not that 'tis only suspected to be such.

Indictment.

JUR' &c. quod T. P. de, &c. die & anno, &c. & diversis temporibus antea & postea, apud L. tenebant, custodiant, occupant, & frequentant in domibus suis ibidem committunt hospitium lupan' luxur' & fornication', & permittunt homines, & alias personas suspectas, & non boni gestus nec famae, cum meretricibus carnaliter concubere, ad magnum nocumentum totius populi Domine Reginae, ibidem prope commorantium, & in malum exemplum omnium aliorum in tali casu delinquent', ac contra pacem, &c.

Behaviour.

Those who are of ill Fame, or common Disturbers of the Peace, those who are accused or guilty of any of the Offences herein after specified, may be required by one Justice to enter into a Recognizance, with Sureties or without them, according to the Discretion of the Justice, to be of the good Behaviour; and upon Refusal, may be committed;

The Offences for which Persons may be bound to good Behaviour are,

Ale-houses.

Those who tipple frequently in them, or in

Taverns.

Bastardy,

- Bastardy.** Those who are reputed to be the Fathers of Bastard Children, and likewise the Mother of such Child, if chargeable to the Parish; but it must be for her second Offence.
- Barretry.** Common Barretors.
- Bawdry.** Those who frequent Bawdy-houses, and the People who keep such Houses; likewise Whoremongers and Common Whores; for 'tis a Temporal Offence, and against the Peace of the Kingdom.
- Cheaters and Cozeners.** By Cards, Dice, false Letters, or any other Game or Games whatsoever.
- Conies.** Hunting, killing or stealing them, either in Park or Warren.
- Drunkard.** Convicted by one Justice of Peace, or Head Officer, or by Proof of one Witness upon Oath.
- Felons.** Acquitted of Felony, or convicted and pardoned, if the Person is of ill Fame; but this is Discretionary.
- Fishes.** Those who steal Fish, or destroy the Pond, the Person must be convicted.
- Gaming.** Such who frequent Gaming-houses, and those who Game and have no Estates to support themselves.
- Hawks.** Convicted of taking Hawks or their Eggs out of the Grounds of another Person, may be bound for 7 Years.
- Hue-and-Cry.** Raising it without a Cause.
- Hunters.** In Parks or Warrens.
- Idle Persons,** Living well, and having no Estates, Trades or Employment, to support themselves.
- Justice of Peace.** Those who misbehave themselves before him, or before any other Officer, in the Execution of Justice; those who speak contemptible Words of him, or abuse his Warrants; those who delude his Authority by Complaints without Prosecution.
- Letter Scandalous.** An Information was brought for writing such a Letter, and the publishing it was proved, and the Offender fined 40 Marks; 'tis a Breach of the Peace. *Ray. 201.*
- Libels.** Those who contrive, procure or publish them, whether true or false, either against Persons living or dead, by Writing, Words, Pictures, or any other Signs of Reproach.
- Misbehaviour,** Of any Kind whatsoever; this must be left to the Discretion of the Justice, it being a general Word.
- Mur.

| | |
|---------------------------|---|
| Murderers, & Man-slayers. | Such who are likely to commit either of these Offences. |
| Night-Walkers. | Those who are suspected to steal any Thing in the Night, or to commit any Misdemeanor against the Person and Goods of another. |
| Peace. | Those who break it in any Manner whatsoever. |
| Poor. | Those who refuse to take poor Children Apprentices; but now they are to pay 10 l. Disturbing them in their Duty; but now they must enter into a Recognizance with two Sureties in 50 l. to appear at the next Sessions; and upon Conviction there, must forfeit 20 l. |
| Preachers. | Mingling it with Corn, and giving it to Poukry. |
| Poison. | Those who are guilty thereof, or breaking the Peace. |
| Quarrels. | Those of a bad Report or Name. |
| Report, or Repute. | Those who continue in the very Act; but if the Riot is over, then the Enquiry must be by Jury. |
| Riot. | Those who lay in wait, or attempt to rob another. |
| Robbery. | Persons suspected to lie in wait to rob, &c. |
| Suspicion. — | |

A Warrant for the good Behaviour.

To the Constable, &c. of H. in the County of Suffen.

Suffen ss. Whereas I am credibly informed, That J. O. of, &c. is a Person of a lewd Life and Conversation, and common Disturber of the Peace: These are therefore to command you forthwith to bring the aforesaid J. O. before me, or some other Justice of Peace for this County, to answer unto such Matters as shall be objected against him by R. R. of, &c. and also, that you require him the said J. O. to bring sufficient Sureties for his good Behaviour until the next General Quarter Sessions of the Peace, to be held, &c. And hereof fail not. Given under my Hand and Seal, &c.

* Here put
in his
Offence.

Moor's
Rep. 606.

Upon this Warrant, the Officer may break open an House to take the Party.

The Recognizance for the good Behaviour.

This may be taken without Sureties, if the Justice thinks fit, for 'tis discretionary in him.

Suffex ff. **M**emorand. quod J. O. de, &c. T. P. de, &c. & T. B. de, &c. 3 die Januarii, Anno, &c. venerunt coram * nobis H. P. & R. B. Ar. duobus Justiciis Dom. Reg. ad Pacem in Com. præd. conservand. assignat. & in propriis personis suis recognoverunt se debere dictæ Dom. Reg. modo & forma sequen. viz. præd. J. O. in quadragenti libris & præfat. T. P. & T. B. in viginti libris separatim bonæ & legalis monete Angl. de separatibus terris & tenementis bonis & catallis suis & cujuslibet eorum ad opus dictæ Dom. Reg. hered. & successorum suorum fieri levare si contingat præd. J. O. deficere in conditione infra script.

* Or it may be before one Justice.

Capt. & cogn Die & Anno
supradictis coram nobis

H. P.
R. B.

The Condition of this Recognizance is such, That if the above-bounden J. O. shall Personally appear at the next General Quarter-Sessions of the Peace, to be holden for, &c. to do and receive what shall be then and there enjoined him by the Court; and, in the mean Time, that he be of good Behaviour towards our said Sovereign Lady the Queen, and all other the People of this Kingdom; that then, &c.

If it be for the Peace, then say,

To answer unto such Matters as shall be objected against him by T. P. of, &c. and to do and receive what shall be then and there enjoined by the Court; and in the mean Time, to keep the Peace of our Sovereign Lady the Queen, as well towards Her Majesty, as all her Liege-People; and especially towards the said T. P. and shall not do, or procure to be done, any Bodily Hurt to him; that then, &c.

The Justice must certify the Recognizance at the next Sessions, or forfeits 10 l. and if the Party doth not appear, the Recognizance it self, with the Cause of the Forfeiture must be certified in the Exchequer, that Process may be awarded against the Offender. *Dalt.* 190.

This Mr. Dalton says, is very near of Kin to the good Behaviour, and therefore I have placed it under this Head; for the good Behaviour includeth the Peace.

Sureties
of the
Peace.

It

Behaviour.

It may be demanded by the Justice, of Persons guilty of anywise breaking the Peace.

By { Affrays, } Fighting, { Suspected to break the Peace.
 { Assaults, } Quarrelling, { Threatning to kill, &c.
 { Battery, } Riot, { Wounding another.

But 'tis generally demanded of the Justice at the Instance of the Party; and before he grants it, he is to administer the following Oath to him or her who requires it.

The Oath.

YOU shall swear, That you are in Fear of your Life, or of some Bodily Hurt to be done or to be procured to be done to you by J. O. &c. and that you do not require the Peace of him for any Malice, Vexation or Revenge, but for the Causes aforesaid.

This being done, he may grant his Warrant to bring the Party before him, &c.

The Warrant.

To the Constable of, &c. and to the Keeper of, &c.

Suffex ss. **W**Hereas T. P. of, &c. hath this present Day made Oath before me, That he is afraid that J. O. of, &c. will beat, wound, maim or kill him, and hath therefore prayed Surety of the Peace against him: These are therefore to command you to cause the said J. O. to come before me, or some other Justice of the Peace for this County, to find sufficient Security, as well for his Personal Appearance at the next General Quarter-Sessions of the Peace, to be holden for, &c. then and there to abide, and do what shall be enjoind him by the said Court; as also in the mean time to keep the Peace, and especially towards the said T. P. and if the said J. O. shall refuse so to do, that then you convey him to the Gaol aforesaid, and deliver him safely to the Keeper thereof; commanding you also the aforesaid Keeper to receive the said J. O. into your Custody, and him there to keep until he shall find such Security as aforesaid.

If this Warrant is directed to a Sworn Officer, he need not shew it to the Party, but he ought to tell him the Contents, and may break open Doors to take him. *Dalt. 404.*

Against
whom
granrable

Feme-Co-
vert.

{ 'Tis grantable against her, but she is not to be
 { bound, only the Sureties.

Husband

| | | |
|----------------------|--|------------------------|
| Husband. | { 'Tis grantable against his Wife, and upon his Request. | |
| Impotent. | — For he may procure another to do that. | |
| Infants. | { But he is not to be bound, only his Sureties. | |
| Lunatick. | — Having <i>Lucida intervalla</i> . | Against |
| Wife. | — Against her Husband. | whom |
| Blind. | — | grantable |
| Cinque-Ports. | { Not by Justices, against any one living there, but by a Writ out of the <i>Chancery</i> , directed to the Constable of <i>Dover</i> Castle, and to the Lord Warden of the Ports. | |
| Deaf. | — | |
| Dumb. | — | |
| Lord, or Peer. | { Not by the Justice, but by <i>Supplicavit</i> out of <i>Chancery</i> , directed to the Sheriff. | |
| Affrays. | { Appearing in either. | What |
| Armed. | — | shall be |
| Affault. | — | a Forfeiture of the |
| Batteries. | — | Recognition. |
| Breach of the Peace. | { Generally by doing any Thing which may tend toward it, or procuring such Act to be done. | |
| Dog. | { To take away a Dog of any Sort, or any Thing of Pleasure. | |
| Imprisonment. | — Without Warrant. | |
| Threatning. | { By Words which may stir up Blows, and threatening Witnesses, or to beat the Person at whose Suit he is bound. <i>Latch. 5.</i> | |
| Defence. | — Of his Person or Goods. | |
| Goods. | { Taking them wrongfully, if not from the Person himself. | What |
| Officer. | { Striking any Man in the Execution of his Office. | shall not |
| Threatning. | — To beat the Party, but not before his Face. | be a Forfeiture of it. |
| Trespass. | — In Corn or Grass. | |
| Recognition. | { 1. By <i>Supplicavit</i> :
Or,
2. <i>Ex Officio</i> . | See the Titlepost. |

If 'tis taken by *Supplicavit* (which is not usual) then the Justice acts as a Minister, and must execute it in every Particular, and make a Return under his Hand and Seal.

If *Ex Officio*, then he is a Judge as well of the Sureties as in what Sum he binds them, how long they shall stand bound, and of other Circumstances; but it must be mentioned in the Condition, that 'tis to preserve the Peace, and that the Party shall appear at next Sessions; where the Justice must certify the

*Stiles 322.
1 Cro. 446.
may take
Money to
lay in de-
posito.*

the Recognizance, that the Party may appear ; if he neglects, he forfeits to l.

Moor 43.

When a Man is thus bound before the Justice of Peace, if he that complains shall afterwards make Oath above, That he is in Danger, and prayeth Surety of the Peace there ; he shall have it, but then a *Supersedeas* must go to the Justice of Peace who took the Recognizance to discharge it below : But if another Person, and not the Party himself, makes Oath above, That he believes the Party to be in Danger of his Life ; then the other must give Sureties there, and both Recognizances shall stand.

If the Peace be required towards a particular Person, as well as generally towards all the Queen's People, then the Party may be continued by the Sessions for half a Year or more ; but if it be not at the Instance of a particular Man, then he may be discharged the next Sessions, if no Body appear against him.

An Indictment will not lie upon the Breach of this Recognizance, but a *Sci. fa.* Raym. 196.

Release
thereof.

If 'tis at the Suit of a particular Person, then he alone may release it before the Day of Appearance ; but tho' this Release is certified with the Recognizance as it ought to be, yet it doth not discharge the Appearance of the Party, because he is bound to the Queen, and likewise to appear, as well as to keep the Peace, which cannot be discharged by the Release of the Party, and therefore he ought to appear at the next Sessions.

If he break his Recognizance, 'tis a new Offence, and he may be indicted for that.

The Release to be written under the Condition of the Recognizance.

Memorand, That the aforesaid T. P. came before me R. B. Esq. on the 9th Day of this Instant *October*, and did, as much as in him lay, freely release the said Security of the Peace formerly desired by him, as above-mention'd, against the above-bounden J. O. In Witness whereof, I have hereunto set my Hand and Seal the said 9th Day of *October*, &c.

But without such a Release it may be discharged, } By the Death of the Queen.
} By the Death of the principal Conuzor :
} But the Recognizance must be certified.

But the Death of the Sureties will not discharge it, for if forfeited, their Executors are liable.

I shall say little of this Writ of *Supplicavit*, because 'tis not much in use. 'Tis true, 'tis a Judicial Writ granted out of B. R. but not without special Cause upon Oath, and by Motion in open Court; for 'tis in effect an Accusation of the Justices below, as if the Party could have no Relief of them, and therefore was forced to apply himself to these above.

'Tis usually directed to one or more Justices, and sometimes to them and the Sheriff; but the Justice to whom 'tis first delivered ought to execute it, and to make the Return. Moor 669.

Suppl-
rabit and
Superse-
deas.

21 Jac. c. 8.
2 Cro. 356,
669.
Godbolt,
Placit. 451.

The Form of the Writ.

A NNA Dei gratia Anglia, &c. Regina dilectis & fidelibus suis R. R. Ar. & sociis suis Justiciar. nostr. ad pacem no-
stram in Com. Suff. conservand. assign. salutem. Supplicavit nobis T. P. quod cum ipse de vita & mutilatione membr. suorum necnon de incendio domorum suarum per J. O. graviter & manifeste cominatus sit velimus pro securitate ipsius Thoma in hac parte providere nos applicationi sue prae. annuentes vobis vel tibi praecipimus firmiter injungentes quod prae. J. O. coram vobis vel te venire faciat ad sufficientes manucaptores inveniend. qui eum manucapere voluerint sub certa pena sibi per te vel vos rationabiliter imponend. pro qua vobis respondere volueritis vel volueris, & si hoc coram vobis vel te facere recusaverit tunc ipsum J. O. proxima Gaola nostra comitatus vel comitatus in eadem salva custodiend. quousq; hoc gratis facere voluerit, & cum securitatem illam sic ceperitis vel ceperis nos inde coram nobis sub sigillis vestris vel alicujus vestrum vel sub sigillo suo distincte & aperte sine dilatione certificetis vel certifies & hoc breve vobis remittetis vel remittas. Teste J. H. apud Westm. &c.

By the Clause in this Writ (*pro qua nobis respondere volueris*, &c.) 'tis discretionary in the Justice to take what Security he shall think to be sufficient; but sometime the Sum is mentioned in the Body of the Writ, and then he is bound to take that Security, and no other.

The Justice, to whom this Writ is delivered, may forthwith issue out his Warrant against the Party: The Form of which is;

The Form of a Warrant upon a *Supplicavit*.

Ex J. H. P. Esq; one of the Justices of the Peace for the County aforesaid, to the Sheriff of the said County, and to the High Constable of the Rape of L. and the Petty Constables of, &c. and to the other Constables within the said Hundred of, &c.

Whereas I have received a Writ from the Queen, reciting, That T. P. hath prayed Her Majesty that he the said T. being in

in danger of his Life, or of some other bodily Hurt, from J. O. Her said Majesty would provide for the Security of him the said T. P. And thereupon Her said Majesty, by the afore said Writ, hath commanded me to cause the said J. O. to be brought before me, to find Security for the Peace, or to commit him to Gaol, if he shall refuse so to do; as by the said Writ, Relation being thereunto had, it doth and may more at large appear. Therefore I do hereby command you, and every of you, immediately upon Receipt hereof to apprehend the said J. O. and cause him to come before me, to find sufficient Sureties for the Peace; to be from henceforth kept by him, as well towards her said Majesty, as all her People, and more especially towards the said T. P. and if the said J. O. shall refuse so to do, that then you convey him to the Common Gaol for the said County in H. there to remain until he shall willingly do the same. Given under my Hand and Seal, &c.

The Party must be brought before no other Justice but him who grants this Warrant, neither can any other discharge him by a *Superfedeas*.

When he is brought before the Justice, and hath taken Security, as directed by the Writ, then he may return it thus, writing on the back thereof:

Executio istius brevis patet in quadam Scheda huic brevi annex.

Then he may file the Return to the Writ thus, in a Piece of Parchment by it self:

Ego H. P. Ar. un' Justiciar. Pacis in Com. Suffex. conservand. Assign. Dom' Reg' humillime certifico quod virtute brevis infra scrip' mihi per imfranoninat. T. P. prius deliberat causari J. O. in dicti brevi nominat' personaliter venire coram me apud, &c. 9 Die Octob. ultimo illaps. & adtunc & ibidem etiam causari presat' J. O. ad interveniend' sufficien' securit' pacis juxta formam & effectum brevis presat. In cujus rei Testimonium huic Schedule manum & sigillum meum apposui 21 Die Octob' Ann. Dom. 1701.

The Justice need not return the Recognizance, which is the Security by him taken as afore said, without a *Certiorari* for that Purpose; and when he recites that Writ, then he may write on the Back-side of it;

Ego H. P. Ar. un' Justiciar' &c. virtute brevis infra scrip. tenent securitatis pacis cujus infra fit mentio Dom. Reg. humillime certifico prout in Schedul' huic brevi annex. Dat' 19 die Octob. An. 1701.

Then write the Recognizance verbatim, and file it to the *Certiorari*, and so send it up together.

When this is done, the Justice may grant a *Superfedeas*, either in Latin, reciting the *Supplicavit*, or without it.

The Form of the Superfedeas.

To the Sheriffs, Bailiffs, Constables, and other of Her Majesty's Officers within the County of Suffex, and to every of them.

Suffex ss. **W** Hereas J. O. of, &c. hath personally come before me T. P. Esq; one of Her Majesty's Justices of the Peace for the said County, and hath found sufficient Sureties * well and truly to keep the Peace towards Her said Majesty, and all Her People; but more especially towards T. P. of, &c. and also that he shall personally appear before the Justices of the Peace at their next general Quarter-Sessions to be held for, &c. Therefore on the Behalf of Her said Majesty, I command you, and every of you, to forbear to arrest, imprison, or otherwise molest the said J. O. for or by Reason of the said Occasion, and no other; and if he shall be already taken or imprisoned for the same, that then you cause him to be forthwith discharged. Given under my Hand and Seal, &c.

* The best Way is to name the Parties, and in what Sums bound; but the Superfedeas is good without it.

The Party may also move the Court of B. R. for a Superfedeas, but this must be upon a *Supplicavit*, and not where the Justice proceeds *Ex Officio*; because by the Stat. of 21 Jac. 1. c. 8. it must appear to the Court, that Process of the Peace, for good Behaviour, is required against the Offender in that Court by the Party grieved, out of which the Superfedeas is desired.

A Mittimus for Breach of the Peace.

To the Keeper, &c.

Middlesex ss. **I** Send you herewithal, the Body of J. O. of, &c. whom I charge and require you to take into your custody, for several Misdemeanors committed by him against the Peace; and you are hereby required to keep him the said J. O. safely in the common Gaol, until he shall procure two sufficient Persons to be bound with him in a Recognizance to the Queen's Majesty; that is to say, each of the said Sureties the Sum of 10 l. and himself in 20 l. to appear at the next general Quarter-Sessions of the Peace to be holden, &c. and in the mean Time to be of the Good Behaviour. And hereof fail not. Given under my Hand and Seal, &c.

H

B. Jamp.

Bigamy.

1 Jac. c. 11. **T**His was prohibited by the Stat. of 1 Jac. by which 'tis made Felony to marry a second Husband or Wife, the first being living.

3 Inst. c. 27. My Lord Coke, in his Exposition upon this Statute, hath made several Exceptions out of it.

1. That this Law doth not extend to a Person whose Husband or Wife is beyond Sea, or to such who shall absent from one another in *England* for the Space of Seven Years: With this Difference, That if the Abode be beyond Sea, then, tho' either of them have Notice that the other is living, such Notice is not material: But if in *England*, 'tis otherwise; for in such Case the Party is not exempted from the Penalty of the Statute.

2. That it doth not extend to Persons divorced *a Mensa & Thoro*.

3. Nor to such whose former Marriage is by any Sentence in the Ecclesiastical Court declared void.

March. 101. And therefore where a Man was divorced *Causa Adulterii*, and married another Wife, the first being then alive, this was held to be within the *Proviso* of that Statute; for the first Marriage is severed by this Divorce: But if it had been *Causa Sevitie*, then he could not have married again; because that is only a temporal Separation till the Anger is past.

Sid. 171. 4. Nor to those who have been married within the Age of Consent, viz. the Man under Fourteen, and the Wife under Twelve, who afterwards disagree to that Marriage.

It has been likewise held, That if a Man marries a Woman beyond Sea, and is living, and his Wife marrieth another in *England*, this is not within the Statute; because the first Marriage cannot be tried here.

The Offenders have Clergy.

The Indictment.

Sussex ff. Jur', &c. quod J. O. nuper de, &c. 16 die Decembris Anno Regni, &c. apud L. in Com' prædict' duxit in uxorem suam quandam H. P. Spinster, quodq; prædict' J. O. postea scilicet 21 die Junii, Anno Regni, &c. apud C. in Com' prædict' secundice duxit in uxorem suam quandam E. R. Spinster prædict' H. P. priori uxore adtunc & ibidem superstite, & in plena vita existente viz. apud O. prædict' in Com' præd' contra Pacem dictæ Domini Regine nunc Coron' & Dignitat' suæ, necnon contra formam Statuti in hujusmodi casu editi & provis'.

Wots, See Dogs.

Blasphemy.

ANY Person bred in, or professing the Christian Religion, and who shall by Writing, Printing, Teaching, or advised Speaking, deny any one of the Persons in the Trinity; or assert, That there are more Gods than one; or deny the Christian Religion to be true, or the Holy Scriptures to be of Divine Authority; and be convicted thereof by Indictment or Information at *Westminster*, or at the Assizes, he shall be disabled to have any Office, and shall not enjoy that Office which he hath, but the same is made void.

9 & 10
Will.

If convicted a second Time, he shall be disabled to sue in any Court, or to be a Guardian, or Executor, or Administrator, and be incapable of any Legacy or Gift, or of any Office, and shall be committed for Three Years without Bail.

Conviction must be by Oath of two credible Witnesses; the Information for *Words spoken*, must be by Oath before a Justice of Peace within Four Days after spoken: And the Prosecution of such Offence must be within Three Months after the Information. But if the convicted Person, for the first Offence, shall, within Four Months after his Conviction, acknowledge and renounce the same in that Court where he was convicted, he shall be discharged from the said Penalties.

Bone-Lace.

THis being formerly imported from Foreign Parts, but the *English* having gotten great Skill and Dexterity in making it; therefore it was thought fit to prohibit the Importation of *Foreign Bone-Lace, Cut-work, Loom-Lace, Needle-work and Point*; and not only the Importer, but he that sells, barbers, or offers it, or causes it to be offered to Sale or Barter, or who shall knowingly keep it for Sale, or for the Use of any Importer or Dealer in the said Commodities, forfeits 20 s. per Yard, together with all the said Goods.

14 Car. 2.
c. 13.
9 & 10
Will.

The Importation, Selling, &c. the said Goods, is declared to be a *Common Nuisance*, and the Goods may be seized, and the Offender prosecuted by any Person.

And 'tis lawful for any Man, with a Warrant from a Justice, and in the Presence of a Constable, &c. in the Day-time to enter the House, Shop, &c. of any Person dealing in Lace (*and not otherwise*) to search for, and seize the said prohibited Goods, and, in case of Resistance, to break open the same, and Chests and Trunks, &c. but the Person complaining must make Oath before the Justice, that he hath Reason to suspect or believe the Goods are there.

These Goods, when seized, must be carried to the next Custom-House; and if they shall be condemned, must be sold by Inch of Candle, upon Notice in Writing fix'd on the Custom-House Ten Days before the Sale, and shall not be deliver'd to the Buyer, until he give Bond to the Queen in double the Value to export them within Six Months after the Date of the Bond.

But if such Bone-Lace, &c. is carried to a Custom-House as *Foreign*, and the Seizer, upon farther Examination, shall believe it to be *English*, then he must give publick Notice of the said Seizure, by fixing a Paper on the Custom-House Door, or any other publick Place, and what Quantiry and Quality of Goods were seized; and if no Person after Ten Days will prosecute for the same as *Foreign*, then they shall be delivered back to the Proprietor, he (or some known Person in his Behalf) making Oath before a Justice, that the Goods, to the best of his Knowledge and Belief, are *English* made; and this must be certified by the Justice to the next Sessions.

If any Question should be made, Whether the Bone-Lace, &c. was made in *England* or beyond Sea, the Proof that it was made *here*, shall be upon the Importer, Retailer, &c.

* By 14.
Car. 2. 'tis
50*l.* and
Forfeiture
of Goods.

The Forfeitures * over and above any Penalties by any former Act, are to be recovered in the Courts at *Westminster* by Action of Debt, &c. and Costs of Suit, one Moiety to the Queen, the other to the Prosecutor.

See the Act.

Brandr, See Ale-house,

Brass and Pewter.

THese Metals are prohibited by the Stat. of 19 H. 7. to be exchanged or sold but in a Market or Fair, or in the Shop of a Pewterer or Brasier, except desired by the Buyers of such Wares, on Pain of 10 l. for each Offence to the * King, and the Prosecutor, to be recovered in any Court of Record, &c. 19 H. 7. c. 6. * 25 H. 8. c. 9.

The Justices, in *Michaelmas* Sessions, may appoint Two Searchers of Brass and Pewter for the County; and the Head Officer may do the like in every Corporation.

Breaking open Doors, See Force.

Brewers.

By the Statute of * 23 H. 8. a Brewer is prohibited to be a Cooper; and if he maketh a Vessel not marked by a Cooper, and puts Beer therein, he forfeits Three Shillings and Four Pence. They must sell their Beer and Ale at such Rates as shall be thought fit by the Justices of Peace, in Pain to forfeit for every Barfel, Six Shillings; for every Kilderkin, Three Shillings and Four Pence; a Firkin, Two Shillings; and for every greater Vessel, Ten Shillings, and lesser, Twelve pence: The Forfeitures to be divided between the King and Prosecutor. * Cap. 4.

But several later Statutes have been made, which relate to Brewers; all which may be reduced under these Heads:

1. What Quantity of Beer or Ale their Vessels shall contain.
2. What Duty is given to the Queen upon each Vessel.
3. What is to be done in order to make Entries.
4. The Punishment of Misentries, or short Entries.
5. The Punishment of Frauds in Brewers.
6. Matters relating to them and the Gaugers.

| | | |
|----------------------------|----|------------|
| 1. Ale-Barrel must contain | 32 | } Gallons. |
| Kilderkin | 16 | |
| Firkin | 8 | |

* W. & M.

* Beer-Barrel must contain 36 }
 Kilderkin 18 } Gallons.
 Firkin 9 }

Duties to
 the King.
 12 Car. 2.
 cap. 23.

2. *Anno 12 Car. 2.* the Parliament gave the King, for every Barrel of Ale or Beer above the Price of Six Shillings, the Duty of One Shilling and Three-pence; and if under that Value, then Three-pence and no more, during Life.

The next Year, the Court of Wards and Liveries was taken away; and in Lieu thereof, the Parliament gave the King, his Heirs and Successors, the like Duty.

But the first Duty being determined by the Death of that King, the Parliament gave his Brother and Successor, King *James*, that Duty during Life.

Afterwards, 1 *Will. & Mar.* an additional Duty of Nine-pence for every Barrel above the Value of Six Shillings and Eight-pence, and under that Value, Three-pence was given to the King, and to continue for Three Years.

Anno 2 Will. & Mar. the Duty which was given to the former Kings, and which was determined by the Death of the one, and the Abdication of the other, was given to *Will. & Mar.* during their Lives, and the Life of the longest Liver; and in the same Year, those Duties were doubled for one Year.

Likewise in that Year a farther Imposition was laid, of one Shilling and Six-pence on every Barrel of Ale above Six Shillings Value; and if under, Six-pence, and no more; and this was to continue for Four Years, which expired in the Year 1694.

But in the Year 1692, which was in the Fourth Year of *Will. & Mar.* the additional Duty of Nine-pence per Barrel was given for Ninety nine Years, to be a Fund for a Million of Money, &c.

Entries.
 12 Car. 2.
 cap. 23.

3. Every common Brewer ought to make an Entry once in a Week, and every Ale-house-keeper, Inn-keeper and Victualer, once in a Month: This must be of Liquors which they Brew or Retail; and the Entry must be at the Excise-Office; and in Default thereof, a common Brewer and Inn-keeper forfeits Five Pounds, and Retailer Twenty Shillings.

If they pay not the Duty within a Week, and Retailers within a Month, they must pay double.

Offenders in *London* against this Law, may be tried by the Chief Commissioners, or Commissioners of Appeal, and in all other Places by Two Justices or more near the Place; and if they neglect or refuse by the Space of Fourteen Days after Complaint, then by the Sub-Commissioners: But in this last Case an Appeal lies to the Sessions, whose Order is final.

12 Car. 2.
 cap. 24.
 Forfeits
 10 l. and
 Retailer
 40 s. per
 Month.

Justices

Justices or Sub-Commissioners may give Judgment upon Proof by one Witness upon Oath, or Confession of the Party, and may issue out a Warrant to levy the Forfeitures by Distress, to be sold within Fourteen Days, and for Want thereof, may commit the Offender; but they may mitigate the Forfeiture, so it be not less than double the Value of the Duty, besides Costs and Charges.

A Warrant for not making an Entry of the Duty.

To the Constable, &c.

Suffex ff. **W**Hereas Complaint hath been made unto us whose Names are under-written, being Justices of the Peace for the County aforesaid, That T. P. of, &c. in the said County, common Brewer, hath not made a due Entry at the Office of Excise, of all Liquors by him brewed, according to the Form of the Statute in that Case made and provided; which complaint we have examined, and find the same to be true: These are therefore to require you to levy the Sum of * 10 l. upon the Goods and Chattels of the said T. P. and to sell the same, if not redeemed within Fourteen Days next ensuing, and that you pay the Money arising by such Sale, to such Person or Persons as by the said Statute is limited and † directed, rendring the Overplus (if any) unto the said T. P. and if you cannot find sufficient Distress, that then you forthwith certifye us thereof, that we may proceed further concerning the Premises: And thereof fail not. Given under our Hands and Seals, &c.

*It may be mitigated, to any Sum above double the Value of the Duty, besides Costs, &c.

†Viz. Three Fourths to

the King, the other to the Informer.

The Justices of Peace, upon any Information for an Offence against the Laws of Excise, may summon any Person, other than the Party accused, to appear before them to give Evidence; and the Person making Default, forfeits 10 l. to be recovered by Action of Debt, &c. in the Courts of Westminster, one Moiety to the King, the other to the Prosecutor. 7 & 8 Will.

The Summons to give Evidence.

Suffex ff. **T**O T. E. of, &c. in the County of, &c. Whereas we are informed, That T. P. of, &c. hath on the sixth Day of November past, brewed and sold Ale and Beer without making a due Entry thereof, according to the Statute in that Case made and provided: These are therefore to require you to appear before us, being Justices of the Peace for the County aforesaid, on the 10th Day of this instant Month, at, &c. to testify your Knowledge concerning the Pre-

misses: And hereof fail not at your Perils. Given under our Hands and Seals, &c.

Allow-
ance.

1 W. & M.

By the Stat. of 12 Car. 2. cap. 24. a Brewer is to have the Allowance of Leakage, viz. Three Barrels in Twenty-three of Beer, and Two Barrels in Twenty-two of Ale, which is now by a subsequent Statute reduced to Two and a half within the Weekly Bills of Mortality; but if he makes a false Entry, and is convicted before Two Commissioners, he forfeits this Allowance for Six Months.

But such who come to make an Entry, and pay the Duty, and tender the same, tho' not actually paid; yet if they can prove it by one Witness, shall not be liable to any Forfeiture.

Information shall not be brought for any Misentry, but within Three Months after the Offence committed, and Notice thereof given to the Defendant in Writing within a Week after Information enter'd.

Punish-
ment of
Frauds.
&c.

15 Car. 2.
cap. 11.
But by Stat.
8 & 9 Will.
the Forfeiture is
200*l.* for
each Vessel

By altering, enlarging or fitting up, without giving Notice to the next Officer of Excise, and using for making Beer, &c.

Back,
Cooler,
Copper,
Fat,
Tun.

Forfeiture is 50 *l.* for every Tun or Fat, One Third to the King, another to the Poor, &c. another to the Informer, &c.

Occupier of an House, where any Brewer keeps a private Store-house for laying Liquors in Casks, forfeits 50 *l.* and the Liquor conceal'd may be seized, and delivered to the Overseer of the Poor to be distributed amongst them.

By converting Small Beer into Strong, after an Account taken by the Gauger, and delivering it out without giving Notice to the Gauger, or by concealing any Beer from Time to Time, forfeits 20 *s.* per Barrel.

By suffering another Brewer to use his Brew-house after he hath compounded for the Duty, without giving Notice thereof, and paying the Excise, the Brewer and the Person for whom 'tis brewed, forfeits 5 *l.* per Barrel to the King and Informer.

By bribing a Gauger, or by taking any Bribe, the Forfeiture is 100 *l.* This Offence must be proved before Two Justices, and by Two Witnesses.

By denying the Gauger to enter, and selling after he is forbid by the Gauger, without paying the Duty, the Forfeiture is 100 *l.*

1 W. & M.

7 & 8 Will.
& M.

By mixing, concealing or conveying Worts contrary to the Act, 15 Car. 2. forfeits 200 *l.* per Barrel.

Officer suspecting any Fraud, may in the Day-time, and in Presence of a Constable, break open a Door of any Person to follow the

the *Pipe : He who opposes him, forfeits 20 *l.* to be recovered as any Forfeiture by any Statute of Excise, or by Action of Debt, &c. one Moiety to the Queen, the other to him who shall discover and sue for the same.

* Keeping a Pipe underground, forfeits for every Offence 100 *l.* per Statute 8 & 9 W.

But by the Statute of 8 & 9 *Will.* the Person opposing the Gauger, forfeits 50 *l.* to be recovered by Action of Debt, &c. one Moiety to the King, and the other to the Informer.

An Officer in the Day-time, as aforesaid, may break up the Ground in any Distilling-House, or the Ground near adjoining, or any Wall, Partition, or other Place, to search for a Pipe, Stop-cock, or other private Conveyance ; and if he finds any such, he may break up the Ground, House or Wall, or other Partition or Place, through or into which such Pipe shall lead, and may break or cut the Pipe.

But if upon Search no such Pipe can be found, or other private Conveyance, then such Officer shall make good the Ground, House, and Wall, &c. or make such Satisfaction to the Owner as Two next Justices, *Quorum unus*, shall adjudge ; or the Party may bring his Action.

Opposing the Officer, the Forfeiture is 100 *l.*

If the Gauger or Officer shall suspect any private Still to be set up in any House, he may make Affidavit of it before a Justice of Peace ; in which Affidavit he must set forth the Grounds of his Knowledge or Suspicion ; and then he may, in the Day-time as aforesaid, and by a Warrant of that Justice before whom he made Affidavit, break open the Door, or any Part of the House, and enter and seize the Stills, and detain them in that House or elsewhere, and if not claimed within 20 Days after the Seizure, they may be sold ; one Moiety of the Money arising by such Sale shall be to the Queen, the other to him who shall discover and seize the same.

But if claimed within 20 Days, then the Person claiming it shall for every Warehouse in which such Still shall be found, and for every Still also, forfeit 200 *l.*

But if no Still be found, then the Officer must make good the House, or pay such a Satisfaction as Two Justices as aforesaid shall adjudge.

The Brewer must tell the Gauger how much strong Beer and Ale, and how much Small, he intends to make before the Guile is cleansed or removed : If he refuses, the Gauger may return the whole Strong, and the Brewer forfeits for every Barrel 20 *s.* And if he encreases his Guile after he hath told the Gauger how much he intends to brew, he forfeits for every Barrel encreased 5 *l.* and the Servant assisting him 20 *s.* and in Default of Payment, Three Months Imprisonment.

8 & 9 Will.

If

Distillers,
10 & 11 W.

If after carrying out the Drink, he mix Small Beer with Strong on the Dray or elsewhere, forfeits 5*l.* for every such Offence; *per Stat. of 7 & 8 Will.*

If a Brewer, Inn-keeper, or Victualler, without giving Notice to the Gauger, shall cleanse or carry out of a Brew-house any Part of the Wort before the whole is brewed, and put in Tuns, Backs, or Coolers, and until the Gauger shall or might take an Account of it, forfeits 40*s.* *per Barrel.*

Delivering Wash to Distillers, without giving Notice to the Gauger, forfeits 20*s.* *per Barrel.*

Gauger.

A Gauger may enter into an House or Brewhouse in the Day-time, or at Night, with a Constable, and stay there whilst the Brewing is there, and may take an Account of the Worts, and see the Strong and Small Beer cleansed, and gauge the Tun, or an Account of the Malt, from which the Worts are made, take; and if refused or not suffered by the Brewer, he forfeits for every Offence 20*l.* and the Informer is not to prove that the Brewer carried out any Wort before he paid the Duty. *7 & 8 Will.*

He may taste the Drink upon the Dray, and enter the Cellar of any Inn-keeper or Victualler to taste it; and if they will not permit him, they forfeit for each Offence 5*l.*

8 & 9 Will.

He must within Three Days after every Week leave with the Brewer, or his Servant, a true Copy, under his Hand, of the Charge made upon the Brewer that Week: If he do not, or shall charge the Brewer more than is in that written Copy, he shall forfeit 10*l.* to be recovered by any Person who will sue for the same in the Courts of *Westminster*.

A Warrant against a Brewer who maketh a false Entry, by which the Allowance of Leakage is taken away for Six Months.

To the Constable, &c.

12 Car. 2.
cap. 23.

Suffex ff. **W**HEREAS *N.V.* of, &c. common Brewer, hath this present Day been duly convicted before us, that he wilfully made a false Entry of Three Barrels of, &c. by him lately brewed, contrary to the Form of the Statute in that Case made and provided: And whereas the Allowance appointed to be made for Waste by Filling and

* *Per 1 W.* Leakage, are Three Barrels upon every Twenty three Bar-

& M. cap.

24. 'Tis Two Barrels and an half within the Weekly Bills. Two Justices in the Country, and Two Commissioners within the Limits of the Chief Office in *London*. Proof of one Witness upon Oath.

rels of Beer; which Allowances, in case of false Entry, and Conviction thereof as aforesaid, shall be forfeited for Six Months. We do therefore adjudge, that the said *N.V.* for this his Offence, shall forfeit and lose the said Allowances for the Space of Six Months next ensuing. Given, &c.

A Warrant to levy Ten Pounds against such who bribe a Gauger, &c.

To the Constable, &c.

Suffex ss. **W**Hereas it hath been duly proved before us, *15 Car. 2. cap. 11.*
H. P. and R. B. Two of Her Majesty's Justices of the Peace for the County aforesaid, That *T. P.* of, &c. common Brewer, did, by Money, Fees, and other Rewards, bribe and corrupt *W. B. Gauger*, * to make a false Return unto the Office of Excise, of Beer and Ale exciseable, and made and brewed within his Division; by reason whereof he hath forfeited the Sum of 10*l.* for the said Offence. These are therefore to charge and command you, &c. to levy the aforesaid Sum of 10*l.* upon the Goods and Chattels of the said *T. P.* by Distress and Sale thereof, rendring to him the Overplus, if any shall happen to be. Given, &c.

* Or to omit the doing or the executing of his Place or Employment.

The Offender may be committed if no Distress can be taken. The like Warrant, Mittimus, and Forfeiture, for the Gauger or Officer who receives a Bribe relating to the Excise; But now, *per Stat. 1 W. & M.* 'tis a Forfeiture of his Office.

The Mittimus.

To the Constable, &c. and to the Keeper, &c.

Suffex ss. **W**Hereas the Constable of, &c. was by a Warrant under our Hands and Seals, required to levy the Sum of 10*l.* upon the Goods and Chattels of *T. P.* by him forfeited for, &c. And whereas we are credibly informed by the said Constable, that the said *T. P.* hath not sufficient Distress whereon the said Sum can or may be levied: These are therefore to require you, &c. to take the said *T. P.* and to convey him to the common Gaol aforesaid; and there to deliver him to the Keeper thereof; requiring you also the aforesaid Keeper to take the said *T. P.* into your Custody, and him there to keep until he pay the said Sum of 10*l.* Given under our Hands, &c.

Two Justices.
1 Lut. 499.

An

An Indictment against a Brewer, for brewing Strong Beer without giving Notice to the Gauger.

Suffex ff. **J**ur', quod J. O. de L. in Com' præd', Pandoxator, 12 die Februarii, Anno, &c. apud L. præd' in Com' præd', clam & secrete pandoxat' fuit (Anglice, brewed) viginti cados, (Anglice, Barrels) optimi poti lupulat', (Anglice, strong Beer) & quod postea, scil' eodem 12 die Februarii, Anno, &c. vi & armis, &c. apud L. præd', in Com' præd', eosdem 20 cados optimi poti lupulat' (Anglice, Barrels of strong Beer) clam & secrete, & absq; aliqua notitia inde dat' alicui Gaugeator', vel al' Officiar' dictæ Dom' Reg', nunc de Excis', diversis Personis ignot', vendidit & utteravit, ea intentione ad defraudand' dictam Dom' Reg' nunc de suo debito Excis' dict' 20 cadorum optimi poti lupulat', (Anglice, Barrels of strong Beer) in magnam deceptionem dictæ Dom' Reg' nunc Coron' & Dignitat' suæ, &c.

Bridges.

THE Statutes which concern the Building, Repairing, &c. Publick Bridges, are,

9H.3.c.15.

1. *Magna Charta*, by which 'tis enacted, That neither any Town or Freeman shall be distrained to make Bridges or Banks, but such who anciently and of Right have been accustomed to do it : This my Lord Coke says was declarative of the Common Law.

2 Inst. 29.

22 H.8.c.5.

2. The Statute of H. 8. by which Four Justices, *Quorum unus*, may in their Sessions enquire, hear and determine, the Annoyances of Bridges, and of Highways adjoining within 300 Foot ; and may charge those who ought to repair the same, by sending Process, and imposing such Penalties as they shall think fit, if the Persons are known.

And if it cannot be known what Persons or Lands ought to repair, it shall be done by the County, Riding, or Corporation, within which the Bridge or Highway are situate ; and if within Two Precincts, then by the Inhabitants of each, by paying their respective Parts.

An Information was exhibited against Two Men in the County of Huntingdon, in the Name of all that County, that they *debent & solent* to repair a Bridge, and thereupon they were at Issue ; and at the Trial, no Evidence was produced to maintain the Information, because by the Statute of H. 8. the County must repair ; and if any particular Person ought

to do it, the County must shew it, to discharge themselves; but there was no Evidence given that *Huntingdon* used to repair the Whole, for Part of the Bridge was in *Bedfordshire*, and they used to repair half. *Poph. 192.*

Before I proceed to the Manner of Taxation, 'tis to be considered who are liable to be taxed; and of those, there are Two Sorts,

1. By Tenure of their Land.
2. By Toll taking.

1. By Tenure; and as to that, 'tis generally true, that a particular Person shall not be bound by Prescription to repair, &c. if it be not in respect of the Tenure of his Land, or of some Profit; but if a Man and his Ancestors have Time out of Mind repaired, such Usage shall conclude him and his Heirs, because it shall be supposed to be done at first by reason of his Tenure in the Lands; so 'tis likewise of a Corporation, Spiritual or Temporal.

But generally, and of common Right, the whole County is liable, and not the Owners of the Land adjoining.

If Evidence can be given that a Man hath once repaired, tho' not for many Years, yet those who have his Estate in the Land shall be liable, because it shall be supposed to be done by reason of his Tenure, unless some other Cause can be shewed. Dalt. 48.

And when a Charge is by reason of Tenure, every Owner of the Land is to be charged proportionably. Where Lands are given towards the Repair of Bridges, it must be let by the Trustees for the best Rent, &c. without taking any Fine; and if the Trustees are negligent, the Justices may do it.

22 Car. 2. cap.

In those Cases where Persons are bound to repair by Tenure, if the Party be indicted for not repairing, and found guilty, the Queen may pardon the Fine, but not the Offence, for that continues still, and he may be indicted again; for tho' the Suit is in the Name of the Queen, yet the Offence is prejudicial to the Subjects, and for that Reason it cannot be pardoned. 12 Rep. fol. 30.

2. By Toll taking.

He who hath any Profit for passing over a Bridge, ought to repair it, because *sensit commodum*, and therefore he ought *sensire onus*; so 'tis if a Bridge was built to serve a private Purpose, which afterwards became necessary for the Publick, as by making of a new Current to a Mill, and a Bridge over it, the Owner of the Mill, and not the County, must repair it.

And

The Man-
ner of
Taxation.

And in either of these Cases, he who repairs the Bridge must likewise repair the Way at each End of the Bridge, and they may enter in the Lands contiguous, and lay Stone, Timber, and other Materials there which are necessary for Repairing, without being subject to an Action at the Suit of the Owner of the Soil, because 'tis for the Common Good.

If it cannot be known who ought to repair, upon an Enquiry made by the Grand Jury in Sessions, then they are to present that the Bridge is in Decay, and to conclude it thus, *viz. Et ulterius jur. præd. præsentant quod prorsus nescitur quæ personæ quæ terræ sive Tenentes aut corpora politica eundem pontem aut aliquam inde parcellam ex jure aut antiqua consuetudine reparare debent aut consueverunt.*

When this is done, the Justices may call the Constables of every Parish, &c. and if they are not there, may send Warrants for them to appear at a particular Time and Place to make a Tax; for by the Statute of 22 H. 8. the Justices, without the Constables or two able Inhabitants of every Parish, cannot make a Tax.

But contrary to the Statute, the usual Course is to charge every Hundred with a Sum in gross, and to send it to the High Constable of each Hundred, who send their Warrants to the Petty Constables to gather it; by Vertue whereof, they assess the Inhabitants in particular Sums, and collect it, and pay it to the High Constables, who bring it to the Sessions.

This is expressly against the Statute, but 'tis done to ease the Constables and Inhabitants of their Attendance, and being generally submitted unto, *Communis Error facit jus.*

But because this usual Way of Taxing was against Law, and for that in many Places more Money was levied than was really necessary for Repairing, and also because the Money was misemploy'd when levied; therefore, by a late Statute, these Matters were remedied.

1 Anne.

By this new Act, the old Statute 22 H. 8. is recited and confirmed in every Thing, unless in such as is alter'd thereby.

And by this Statute, the Justices in Sessions, upon such Presentment made as is before-mentioned, may assist every Town, Parish or Place within their Commission, in Proportion, as usually hath been assessed towards the Repair of the Bridge.

The Money thus assessed is to be levied by the Headborough of every respective Parish, or by such as the Justices in Sessions shall appoint.

When 'tis levied, the Headborough must pay it to the High Constables of every Hundred within 6 Days after 'tis collected, and they must pay it to such Persons as the Justices

Justices by a Sessions Order shall appoint to receive it, and this Payment must be within ten Days after the Receipt by the said High Constables.

And then 'tis to be employed according to the Order and Directions of the Justices, for and towards mending the Bridges.

Now the Manner of levying it is thus, (*viz.*) The Headborough must demand it of the Party, and if 'tis not paid within ten Days after Demand, he may levy it by Distress, and Sale of his Goods, rendering the Overplus, the necessary Charges of the Distress being first deducted.

And if any of the Officers neglect to assess, collect, or pay the Money, they forfeit 40 s. for every Offence.

So likewise if the Receiver, who is appointed by the Justices, pays any Money without this Order, he forfeits 5 l. which must be applied to repair the Bridge.

And no Fines upon Presentments or Indictments, &c. shall be returned into the Exchequer, but shall be paid to such Receiver.

Also all Matters concerning Repairing and Amending Bridges shall be determined in the County where they lay, and not elsewhere; and no Presentment or Indictment shall be removed by *Certiorari*.

'Tis likewise provided, that the Justices may allow to any Person concerned in Execution of the Act, 3 d. in the Pound out of the Money collected; and that if any Suit is brought for putting the Act in Execution, the Defendant may plead the general Issue, and give the Act of 22 H. 8. and this Act in Evidence, and if he has a Verdict, shall have double Costs.

By this Act 'tis farther provided, That the Evidence of the Inhabitants of those Places where the Bridges are in Decay, shall be taken and admitted at any Trial upon an Information or Indictment, &c.

And lastly, it takes Notice of some private Bridges; as for Instance, the Statute of 23 Eliz. for rebuilding *Cardiffe* Bridge is repealed, and that from henceforth that Bridge shall be reputed a Common Bridge, and repaired by the County of *Glamorgan*.

That the Wardens and Assistants of *Rochester* Bridge shall be chosen every Year on *Friday* in that Week next after *Easter* Week.

And likewise, that Money is to be levied for rebuilding and repairing the Piers in the Port of *Whitby*, (*viz.*)

An Indictment where a Bridge is in Decay, and
'tis not known who shall repair, &c.

* Or, *supra*
aqua cur-
sum.

Jur', &c. quod pons publicus & communis situs in alta via regia super * flumen de L. infra parochiam de H. in Com' S. vulgari-
ter dictus, &c. est, & per aliquot annos jam ult' elaps' fuit valde
ruinosus & in maximo decasu pro defectu reparationis, adeo ut Sub-
diti Dom' Reginae, in, supra, trans, vel ultra dictum pontem per se
vel cum eorum equis, vel cariagiis, transire, redire, & ire, sine mag-
no discrimine, non possunt nec audent, ad commune nocumentum om-
nium dictae Dom' Reginae Subditorum, quorum interest ratione nego-
tiorum suorum ibidem transire, & ulterius jur' predict' presentant
quod prorsus nescitur quae persona quae terra sive tenementa aut cor-
pora politica eundem pontem aut aliquam inde parcellam ex jure aut
ex antiqua consuetudine reparare debeant aut consueverunt.

* If the In-
habitants
of a parti-
cular Place
ought to
repair, then
say, Et quod
inhabitan-
tes de, &c. pro tempore existentes debent reparare, sustentare, & manutenere predict'
pontem, & quilibet eorum pro sua parte reparare debet, &c.

If it is known who ought to repair *ratione tenurae*, then the
Indictment must be thus; viz. after the Recital that 'tis in
Decay, * Et quod R. B. *ratione tenurae seu manerii sui de A. cum*
pertinen' in Com' S. predict' pontem illum reparare & emendare de-
bet; & quod idem R. B. ac omnes alii quorum statum pred' R. B.
habet in eodem manerio de, &c. pontem illum reparare & emendare
debent & consueverunt de tempore cujus contrarii memoria hominum
non existit toties quoties necesse fuit, &c. Godb. 346, 347.

pro tempore existentes debent reparare, sustentare, & manutenere predict'
pontem, & quilibet eorum pro sua parte reparare debet, &c.

'Tis not always necessary to set forth *ad commune nocumen-*
tum, for if 'tis that *ligei Dom' Regin'* cannot pass *ad nocumen-*
tum eorum, the Word *Ligei* takes in all the Queen's Subjects,
and then *ad nocumentum eorum* amounts to as much as *ad com-*
mune nocumentum. 2 Leon. 183.

So an Indictment for pulling down a Bridge in *via regia*
was held good, tho' it did not shew that it was a common
Bridge. 4 Leon. 40.

Suffex ff. *Ad Generalem Quarterial' Session' Pacis, &c.*
Dominae Reginae tenet, &c.

WHereas the Inhabitants of H. in this County, were for-
merly indicted for not repairing of a Bridge called, &c.
now in Decay; and whereas at the *Midsommer Sessions* held for
this

this County, in the Year, &c. upon Trial of the Traverse join'd, and the County having Notice, it was then and there found that the said Inhabitants ought not to repair the said Bridge. And whereas the Jury, &c. have presented, that 'tis not known what Hundred, Lands or Tenement, Town or Parish, or what Person certain, or Body Politick, ought of Right to repair the same; therefore, according to the Form of the Statute in that Case made and provided, it is now ordered by this Court, That the said Bridge shall be made and repaired by the Inhabitants of, &c. within which the said Bridge standeth; and that the Justices of Peace of that Division would take Care for the raising Money for and towards the Repair of the said Bridge.

The Justices Warrant to the Constable, &c. to make a Tax for a County-Bridge.

To the High Constable of the Hundred of, &c. and to R. P. and R. B. of, &c. Inhabitants of the said Hundred, and to every of them.

Suffex ss. **W**Hereas the Bridge called, &c. within the said County, was lately in decay, and unrepaired; and by an Order made at the Sessions, &c. in the County aforesaid, the said Decays and Reparations were ordered to be amended at the Charge of the County, and have been amended accordingly; the proportionable Part of which Charge thought fit to be imposed upon the Division of, &c. doth amount to, &c. and the proportionable Part of the same thought fit likewise to be imposed upon the Rape of, &c. doth amount to, &c. of like lawful Money: These are therefore in Her Majesty's Name, to command you the said Constable and Inhabitants aforesaid, that you, or any three of you, whereof the said Constable to be one, do forthwith, after Notice given, make a Taxation on all and every the Inhabitants of the said Hundred, for the raising the said Sum of, &c. so imposed on the said Hundred, and that you do bring the said Tax fairly written and subscribed by you, or by any three of you, whereof the said Constable to be one, unto us, at the House of, &c. on Monday, &c. to the End we may farther proceed therein, as to Justice doth belong. Given under our Hands and Seals, &c.

Four Justices, *Quod-
P. 1677 1678*

A Warr

A Warrant to collect the Tax.

To J. O. and T. B. *Inhabitants of the Hundred of L. in the said County, &c.*

Suffex ff. **T**Hese are to require you, that you forthwith collect the several Sums of Money mentioned in the Taxation, herewith delivered unto you on the several Persons mentioned, and that you pay the same unto R. M. of, &c. whom we have appointed General Receiver of the said Money so to be raised for the Purpose aforesaid, deducting out of the same only 30 s. by us allowed unto you, for and towards your Care and Pains in collecting and paying the same. And in case of Refusal or Neglect of Payment by any of the said Parties, of the particular Sums on them respectively taxed, after Demand thereof, that then you certify unto us the Name or Names of the Person or Persons so refusing, with all convenient Speed. Given under our Hands, &c.

A Warrant for Non-payment, to levy the Sum by Distress.

To the Constable, &c.

Four Justices.

Suffex ff. **W**HEREAS Complaint hath been made unto us, by, &c. who were duly appointed to collect the Money imposed upon the Hundred of, &c. for and towards the Repairing of the Bridge of, &c. in the said County; that the several Persons whose Names are under-written, have refused to pay the respective Sums to which they were severally taxed for the Purpose aforesaid, although the same had been duly demanded of them respectively. These are therefore to require you, to cause the said Persons to come before us to answer the Premises; which if they refuse to do, that then you levy the several Sums aforesaid, by Distress and Sale of the several Goods of the said Offenders; and in Default of such Distress, that you certify us thereof. Given under our Hands and Seals, &c.

But the safest Way for the Justices, is to do all Things which relate to Bridges in the open Sessions; and the Precedents above-written are, when the Statute is pursued; for tho' 'tis not expressly directed by the Statute, that the Proceedings shall be in the Sessions, where 'tis not known who shall repair, as 'tis where the Person is known, yet my Lord Coke's Advice is to proceed there.

Buggery.

115

The Purport of the Statute, where 'tis known who shall Repair, is, *viz.*

1. Four Justices, *Quorum unus*, may call before them the Constables of every Parish, or two Inhabitants thereof.
2. They may, with their Assent, tax every Inhabitant.
3. After the Tax made, they must write the Name of every Man taxed in Two Rolls indented.
4. They must appoint two Collectors for every Hundred, and give them one Part of the Roll under the Hands and Seals of the Justices.
5. By Vertue thereof the Collectors may distrain.
6. Justices may appoint two Surveyors to view the Repairs, and cause the Decays to be amended.
7. Both Collectors and Surveyors must accompt to the Justices, who may send Process against them returnable in Sessions, and commit them.

Buggery.

THis is an Offence against the Order of Nature, committed by Mankind with Mankind or Beasts, or by Women with Beasts.

The Words of the Statute which makes this Offence Felony, are, (*viz.*) If *any Person* shall commit the detestable Sin of Buggery with Mankind or Beast, &c. which Word, *Person*, extends as well to a Woman, as to a Man; and, as my Lord Coke tells us, that Word might be used by the Law-makers, because, a little before that Act was made, a great Lady had committed Buggery with a Baboon, and conceiv'd by it.

25 H.8.c.6.

3 Inst. 59.

There must be *Penetratio & emissio Seminis*; for the one without the other will not make the Sin; and therefore the Indictment must be, *Quod carnaliter cognovit, &c.*

What makes the Offence.

In my Lord Audley's Case, which happened Anno 6 Car. 1. and who was tried by his Peers; the Fact was Pollution, and using a Man upon his Belly Sodomitically, without Penetration; and the Lords demanded of the Judges, whether this was Buggery by the Statute 25 H. 8? The Lord Chief Justice Hide told them it was; but Richardson, the Chief Justice of the Common-Pleas, was of another Opinion: And this might create different Opinions amongst the Peers at that Trial, who were 27 in Number; whereof 12 acquitted him of the Buggery, and 15 found him guilty.

The Pun-
ishment.

It was antiently punished by Death: But the old Writers differ in the Manner; for some say, the Offender must be burnt; others, that he shall be buried alive; and some say, the Man was to be hanged, and the Woman drowned; but now by the Statute of the 25 H. 8. cap. 6. 'tis made Felony without Benefit of Clergy.

'Tis true, this Statute was repealed 1 Mar. but 'tis revived by 5 Eliz. cap. 17.

Agens & consentiens pari pena plectantur, viz. by hanging 'till they are dead, unless the Party consenting is within the Age of Discretion, and then 'tis not Felony.

Flutt. 115.

And this may be the Reason why the Age of the Party is expressed in the Indictment, tho' I find it omitted in my Lord Audley's Case for this very Offence; and probably his Indictment was drawn by that of Mr. Stafford, herein after mentioned, for they vary only in this Particular, and the Word *motus* is left out of one, but 'tis *motus & seductus* in the other.

3 Inst. 59.

In Easter-Term, 5 Jac. one Mr. Stafford was indicted, and found guilty of this Offence, for which he was executed; and because my Lord Coke tells us, that the Indictment was drawn with great Advice, I have thought fit to copy it here *verbatim*.

Co Entr.
352.
Form of
the Indict-
ment.

Middl' ff. **J**UR. &c. quod H. S. nuper de London, Armiger, Deum prae oculis suis non habens nec Naturæ ordinem, respiciens sed instigatione Diabolica motus & seduct. duodecimo die Maii, &c. apud paroch' sancti Andree in High-Holborn, in Com' Middl' præd. viz. in Domo Mansionali cujusdam M. ibidem vi & armis in quendam R. B. puerum masculum circa ætatem sexdecim Annorum insultum fecit & cum eodem R. B. adtunc & ibidem nequiter Diabolice Felonice ac contra Naturæ ordinem rem veneream habuit ipsumque R. adtunc & ibidem carnaliter cognovit peccatumque; illud Sodomiticum detestabile & abominandum, Anglice, vocat. Buggery (inter Christianos non nominand.) adtunc & ibidem cum eodem R. B. nequiter Diabolice Felonice ac contra Naturam commisit & perpetravit in magni Dei omnipotentis displicentiam ac totius generis humani dedecus ac contra pacem dicti Domini Regis coronam & dignitatem suam, & contra formam Statuti in hujusmodi casu edit. & provis. &c.

Burglary,

Moor 660.

IS a Breaking and Entering of a Mansion-House in the Night-time, with an Intent to commit Felony, whether such Felonious Intent be executed or not.

But

But an Infant under 14, a natural Fool, or a very poor Person, who shall enter a House, being compelled by Hunger, are not Burglars.

Upon this Definition, these Things may be observ'd:

1. What is a Breaking, &c. and where Burglary may be committed without an actual Breaking.
2. What is an Entry, and where Burglary may be done without an actual Entry by the Person himself.
3. What shall be esteemed a Mansion-House, and what Place make the Offence Burglary, and what not.
4. The Intention of the Person is to be considered.
5. Clergy, &c.

1. As to the First, The entring of an House with the Doors open, is a Breaking in Law; yet 'tis not Burglary, unless the Door, Window, or Wall are broken, or the Latch drawn, or the Door unlock'd.

If a Man comes into an House, and enters into a Chamber, and there breaks open a Trunk, and steals Money or other Goods; this is no Burglary, because the Trunk was no Part of the Dwelling-House: But in such Case, if he breaks open the Chamber-Door, or any Door of a Cupboard which is fixed to the Freehold, this is an actual Breaking the House. *Keeling* 58, 59.

2. But Burglary may be committed without an actual Breaking, as by those who watch to prevent a Discovery, whilst their Companions break the House.

By coming down a Chimney.

By entring with the Help of a Key.

By entring, the Door being open, and the Owner of the House retiring to a Chamber, which the Offender breaks open.

By breaking Glafs in a Window, and hooking out Goods. *H. P. C.* 311; *Anderson* 114. *Moor.* 660. *Poph.* 42.

By pretending themselves to be robbed, and raising Hue-and-Cry, and with a Constable demanding Entry, the Owner opens his Doors, then they bind the Constable, and rob the House, for this is in *fraudum Legis*.

By the Help of a Servant within opening the Door or Window, and the Thief entring, 'tis Burglary in him, and Robbery in the Servant.

The Master lies in one Part of the House, and the Servant in another Part, who in the Night draws a Latch, and enters the Chamber of his Master with an Intent to murder him, 'tis Burglary. *Hurt.* 20.

2 Sid. 254.

Anno 17 Car. 2. one *Fer*, a Solicitor, had obtain'd Judgment against the casual Ejector, and the Sheriff deliver'd Possession of the House, which he enter'd, and sent the Defendant to *Newgate* for want of Bail, and carried away Goods to a considerable Value; but having no Colour of any Title to the House, he was found guilty of Felony; and though a Solicitor, he could not read, and was hang'd.

By putting the Hand or a Hook in the Window, and taking out Goods.

By turning the Key, when the Door is lock'd on the Inside.

3. What is a Mansion-house. Dyer 99.

3. The Church is a Mansion-House, within the Meaning of the Law.

And therefore an Indictment against the Offender, for that he *Burglariter fregit* (without saying, *intravit*) *Ecclesiam in nocte ad spoliand. & depredand. bona parochianorum in eadem existent.* but took nothing; this was held good.

Where a Man hath two Dwelling-Houses, and dwells in each by Turns, and one is broken, though no Person in it, 'tis Burglary.

Hutr. 33.

A Man had a Lease of a Shop, which was in the Dwelling-House of another, and the Lessee worked there in the Day-time, but lay in another House, the Shop was broke open in the Night, and the Goods stole; this is not Burglary, because it was not a Mansion or Dwelling-House, for it was severed from the House by the Lease.

A Chamber in a College, or Inns of Court, though no Body therein; or the Chamber of a Guest, broken by the Inn-keeper, with an Intent to rob.

Now the Reason why 'tis Burglary to break open a Chamber in the Inns of Court, is because every Gentleman hath a several Property in his Chamber; But *Somerſet-Houſe*, or *Whitehall* are *Domus Mansionales* of the Queen; and if a Chamber is broke open there, it must be so alledged in the Indictment, and not *Domus Mansionalis* of the Person who lodged in it. *Keeling 27.*

A Barn or Stable, contiguous to a Dwelling-House: But a Shop, distinct from the House, is not.

Nor a Booth; but yet, by a particular Statute, 'tis made Burglary to break it open.

And by a late Statute to break open a Shop, or Warehouse belonging or used with the Dwelling-House, in the Day-time, and taking Money or Goods to the Value of 5*l.* tho' no Person is therein, is Burglary: Which see *Postea*.

4. The Intent.

4. And this must be to common Felony; if it be to do a Trespass, 'tis not Burglary for breaking and entring: But going away may be Felony, but 'tis not Burglary.

If Thieves in the Night come to a Dwelling-House, and a Person within opens the Door to resist them, and one of the Rogues shoots into the House, the Door being open, and missing the Person, breaks the Wall on the other Side with the Bullet; this is not Burglary, because the breaking the Wall with the Bullet was not a breaking the House with Intent to commit Felony. *Sawile 59.*

But yet, where one intended to commit Murder, and for that Purpose broke a Hole in the Wall in the Night, and perceiving where the Person was, shot at him thro' the Hole, but missed him; this was held Burglary. 1 *And. 114, 115.*

And so are all the late Authorities, &c. That breaking a Dwelling-House in the Night-time, with an Intent to kill or rob, though there is not any Person in the House, yet 'tis Burglary. *Moor 660. Poph. 52.*

'Tis true, all the ancient Precedents were only, that the Criminal *noctanter, & felonice* * *fregit*; but in the latter Indictment 'tis usually inserted, that somebody is in the House, and put in Fear, because by the Statute 23 H. 8. Clergy is taken away from those who rob a House, the Owner or Dweller, his Wife, Children or Servants, then being within, and put in Fear. *Moor 660, 661. Poph. 43.*

* *Domum Mansionalem*, for these Words make it Burglary, tho' 'tis not set forth *Poph. 43.*

that somebody was in the House, and put in Fear. 1 *And. 302, 661.*

Entering in the Day-time, and lying privately till Night, then robs and departs, 'tis not Burglary; but if he breaks open any Door to get out, 'tis Burglary.

5. If an House was broke open, with an Intent to commit Felony, and no Body therein, in former Times the Offender had his Clergy; but if the Dweller had been within, and put in Fear, then by the Statute of 23 H. 8. *cap. 1.* Clergy was taken away, for this was esteemed an Aggravation of the Offence; and therefore the Precedents in those Days were, *viz. Quod Domum Mansionalem noctanter Felonice & Burglariter fregit & intravit*, some Person being therein, &c.

5. Clergy.

Afterwards, 18 *Eliz. cap. 6.* Clergy was taken away in all Cases of Burglary; and *Anno 39 Eliz.* a Law was made, That if a House was broke open in the Day-time, and Money and Goods to the Value of 5 s. taken away out of the House, or Out-House thereunto belonging, tho' no Person therein, yet 'tis Felony without Benefit of Clergy.

But because Goods were often stolen in a Dwelling-House without an actual Breaking, a Law was made, That if any Person feloniously take away Goods, being in a Dwelling-House, the Owner, or other Person being therein, and put in Fear; or shall rob any Dwelling-House in the Day-time, any

; & 4 Will;

any Person being therein, or shall be accessory to the same; or shall break any Dwelling-House, Shop, or Ware-House thereunto belonging, in the Day-time, and feloniously take away Goods to the Value of 5 s. tho' no Person therein; or shall counsel, hire, or command another to commit Burglary, shall not have Clergy.

Sid. 171.

If two are indicted for Burglary, and one is found guilty of Felony, and the other of Burglary, 'tis not a good Verdict as to the Felony, because the Jury might have found both guilty of Felony; but they cannot find one guilty of Burglary, and the other of Felony, upon the same Indictment and Evidence.

This was the Case of a Father and his Son; the Father, being found guilty of Burglary, was hang'd; and the Son, though found guilty of Felony, was discharg'd.

If two are indicted for the same Burglary, and one convicted, and the other acquitted, he who was acquitted shall never again be tried for that Fact; but if he took any Goods out of the House which were not mention'd in the Indictment, as Money of any Servant, &c. he may be indicted for that Felony, because the Facts are several Felonies. *Keeling 30.*

The Indictment.

* It must be
Noctanter,
for other-
wise 'tis but
Felony.

Cr. El. 583.
Savile 47.
† And not
Burglari-
ter. Cr. Eliz.
900.

Accessory
before the
Fact.

Accessory
after the
Fact.

Suffex ff. JUR. &c. quod T. P. de H. in Com. præd. Labourer, 4 die Maii, Anno Regni, &c. vi & armis Domum Mansionalem R. B. apud B. in Com. præd. Ar. * noctanter, (viz.) inter horas decimam & undecimam post meridiem ejusdem diei quodam R. N. tunc in eadem domo in pace Dei & dicta Dom. Reg. existent. felonice & † Burglariter fregit & intravit & decem libras legalis monete in pecuniis numeratis de bonis & catallis præd. R. B. in dicta domo adtunc & ibidem existent. invent. adtunc & ibidem felonice & Burglariter furat. fuit cepit & asportavit contra pacem dicta Dom. Reg. Coronam & Dignitatem suas.

Et quod quidam R. H. de L. in Com. præd. Teoman, ante feloniam & burglar. præd. per ipsum T. P. in forma præd. perpetravit. viz. sexto die Aprilis, Anno, &c. eundem T. P. apud B. præd. ad feloniam & burglar. præd. in forma præd. faciend. felonice abetavit procuravit & excitavit contra pacem, &c.

Et quod quidam J. O. de H. præd. in Com. præd. Labourer, sciens præfat. T. P. feloniam præd. in forma præd. fecisse & perpetrasse eundem T. P. dicto quinto die Maii, Anno, &c. post feloniam præd. per ipsum T. P. sic factam & perpetratam apud L. præd. in Com. præd. felonice & voluntarie recepit confortavit & hospitatus est contra pacem, &c.

Burglary.

121

If any Person commits Burglary, House-breaking, Felony, in stealing Horses, Money, Wares, or Goods, from whom the Benefit of Clergy is taken away by the Act of 11 Will. and being out of Prison, shall discover two more Offenders and convict them, he shall have a Pardon, which shall be a good Bar to an Appeal. 11 Will. cap.

Burials, See Will.

Burning of Houses.

TIS Felony at Common Law, maliciously and voluntarily to burn the House of another.

Whether, { 1. There must be an actual Burning, and what that is.
2. It must be maliciously and voluntarily.
3. It must be the House of another.

1. 'Tis not necessary that the whole House should be burnt, for 'tis Felony to set on fire and burn part of it.

2. It must be done maliciously and voluntarily, and so is the Indictment, *Quod voluntarie & ex malitia sua praecogitata, &c.* for if 'tis done by Mischance or by Negligence, 'tis not Felony.

Sometimes the Law implies Malice, as if the Offender intends to burn the House of A. only, and by this Means the House of B. is set on fire; this is Felony, for the Event shall be coupled to the Cause, which was malicious.

3. The House of another. Formerly it was Felony to burn the Frame of an House, or the bare attempting to set on fire a Stack of Corn; and 'tis still Felony to set on fire a Stack of Corn in *Northumberland, Cumberland, Westmorland, or Durham.*

* 43 Eliz.
cap. 31.

22 & 23
Car. 2.
cap. 7.

And even now, 'tis Felony in the Night-time to burn Barns, Stables, Ricks of Corn, Hays, &c. or any of the Out-Houses which are contiguous to the Dwelling-House, and the Offender is not to have Clergy.

But if a Barn stand remote, and is not Parcel of the Mansion-House, then 'tis not Felony, unless it hath Hay or Corn in it.

He who is in Possession of a House by Lease sets it on fire, with an Intention to burn his Neighbour's House; this was held to be no Felony by the Opinion of three Judges, because the Offender being in Possession, it cannot be said to be done *vi & armis*; but Justice Crook was of a contrary Opinion, because the Offence falls under the Definition of Felony, which is a capital Crime, committed *felleo animo*, and here the Fact (tho' in his own House) was done maliciously, and so found by the Jury, and the Intention shall be coupled to it, which was *Nequiter factum & mala conscientia*.

Cro. Car.
376.
Holmes's
Case.
Jones 351.

A Cap.

Burning of Houses.

A Captain, Master, or Mariner, or other Officer belonging to a Ship, and burning or destroying it, or procuring the same to be done, to the Prejudice of the Owner or Merchant, must suffer Death as a Felon; and if committed where the Admiralty hath Jurisdiction, it shall be tried by Vertue of a Commission under the Great Seal, in such Places in the Realm as shall be therein limited; and such Offender standing mute, or challenging above the Number of 20 Persons, shall suffer Death without Benefit of Clergy.

Indictment.

* It need not be *Mansionalem*, but *Domum* only, which comprehends a Barn, Stable, &c.

3 Inst. 67.

Suffex ff. **JUR.** &c. quod J. O. nuper de H. in Com. præd. Lebourer, secundo die Decembris, Anno, &c. ad * *Domum Mansionalem* R. B. de H. præd. in Com. præd. Gen. (eadem Domino in dicto Com. existent.) vi & armis inter horas quintam & sextam ante meridiem ejusdem diei accessit & cum candela ignita qua dist. J. O. adtunc & ibidem in manu sua tenuit (or as the Case is) præd. domum ex malitia sua præcogitata felonice accendit, unde eadem domus tunc & ibidem totaliter combusta fuit & sic præd. J. O. prædicto secundo die Decemb. Anno supradicti apud H. præd. in Com. præd. domum mansionalem præd. modo & forma supradict. voluntarie & ex malitia sua præcogitata felonice incendit & combustit contra pacem, &c.

For burning a Barn with Corn in it.

Suffex ff. **JUR.** &c. quod J. O. nuper de H. in Com. præd. Lebourer, secundo die Decemb. Anno, &c. apud L. in Com. præd. vi & armis horreum R. B. apud H. præd. in Com. præd. existent. felonice fragit & intravit & adtunc & ibidem ex malitia sua præcogitata & ex instigatione diabolica in horreum præd. cum diversis granis & garbis adtunc impletum ignem accensum adtunc & ibidem voluntarie & felonice imposuit & cum eodem igne adtunc & ibidem horreum præd. cum omnibus granis & garbis supradict. in eadem horreo adtunc existent. voluntarie & felonice combustit & totaliter cum igne illo felonice & voluntarie consumpsit contra pacem, &c.

Butchers.

BUtchers may be guilty of Offences against the Law,

- | | | |
|---------------|---|---------|
| 1. In Buying | } | Cattle. |
| 2. In Killing | | |
| 3. In Selling | | |

3. By

1. By 3 & 4 Ed. 6. c. 19. buying of fat Cattle, and selling them again alive he forfeits them.

In London or Westminster, or within 10 Miles, buying fat Cattle and selling them alive or dead to another Butcher, the Seller forfeits the Value, by the Statute 22 & 23 Car. 2. cap. 10.

2. Killing of Calves to sell under 5 Weeks old, loseth 6 s. 8 d. Or Bullock, Steer or Heifer, under two Years.

Killing in his Scalding-House, or within the Walls of London, forfeits 12 d. for every Ox, and 8 d. for every other Beast. 4 H. 7. cap. 3.

3. Selling Swines-flesh measles, or dying with the Mur-rain, shall be amerced for the first Offence, Pillory for the second, fined for the third, and abjure the Town for the fourth Offence.

Selling of fat Oxen, Steers, Runts, Kine, Heifers, Calves, Sheep, or Lambs, alive, forfeits double the Value; one Moiety to the Queen, the other to the Informer.

Selling at unreasonable Rates, and not for moderate Value, loseth double the Value.

Conspiring not to sell but at Prices agreed on; the first Offence is 10 l. to the Queen, and if not paid within 6 Days after Conviction, must have 10 Days Imprisonment; second Offence 20 l. and if not paid, then in the Pillory; the third Offence 40 l. and if not paid, &c. lose one Ear. 2 Ed. 6. cap. 15.

Butcher using the Mystery of a Tanner, forfeits 6 s. 8 d. per Day, during the Time he useth both Professions, one Part to the Queen, another to the Prosecutor, and another to the City, Corporation, or Lord of the Liberty. 1 Jac. 1. cap. 22.

The aforesaid Act, 23 Car. 2. was continued by the Statute 5 Annæ, from and after the 25th of March, 1707. for 7 Years.

By which Act 'tis provided, That no Butcher, either by himself, his Servant, or Agent, shall sell any fat Cattle alive or dead to another Butcher in London or Westminster, or within 10 Miles thereof; if he doth, he forfeits the Value of the Cattle so sold, or offered to Sale, one Moiety to the Queen, the other to him who shall sue for the same; and if he recover, he shall have full Costs.

An Indictment for selling of unwholsome Flesh.

Suffex ff. JUR. &c. quod T. T. de L. in Com. præd. Macellarius, secundo die Decembris, Anno, &c. apud L. præd. in Com. præd. carnes insalubres, viz. putrid corruptæ & ventilat fraudulenter subdole & deceptivè venditioni exposuit in malum exemplum & magnum periculum subditorum Dom. Reg. nunt & contra pacem, &c.

Butter

15 Car. 2.
c. 8. 22 &c.
23 Car. 2.
cap. 10.
Continued
1 Jac. 2.
cap. 19.

Butter and Cheese.

Buying.

THE Statutes which concern this Matter, are,
By 3 & 4 Ed. 6. cap. 21. None, except Inn-holders or Victuallers, shall buy Butter or Cheese to sell again, except by Retail in open Shop, Fair or Market, and not above a Wey of Cheese, or Barrel of Butter, at one Time, in Pain to forfeit double the Value.

What is to be done in { Buying
Packing
Selling } Butter.

Selling.

4 & 5 W.
& M. c. 7.

By 4 & 5 W. & M. cap. 7. The Buyer having approved the Butter, the Seller shall not afterwards be liable to any Penalties in the Act, 14 Car. 2. and the Buyer must then set his Mark or Name at length in the Cask: Afterwards, if the Seller shall open or exchange the Cask, or if he pack bad Butter, or mix bad with good, or do any Fraud, and is convicted before one Justice, forfeits 20 s. for every Firkin, to be levied by Warrant of a Justice.

Packing.

Old Butter shall not be packed with New, or Whey-Butter with that made of Cream, nor salted with great Salt, nor with more than will preserve it; the Forfeiture is double the Value of Butter false packed, and 6 Times the Value of every Pound wanting.

None shall repack Butter for Sale, on Pain to forfeit double the Value.

It must be packed in Casks of dry and sound Timber, marked with the Weight of the empty Cask, and with the first Letters of the Christian and Surname of the Packer at length, with an Iron, on Pain to forfeit 10 s. for every Hundred Weight of Butter.

13 & 14
Car. 2.
cap. 26.

He must deliver in every Kilderkin 112 Pounds, and in every Firkin 56 Pounds, and in every Pot 14 Pounds, besides the Casks and Pots.

The said Offences to be determined by the Justices in their Sessions, or in any Court of Record, in the Place where committed, by Action of Debt, Information, Indictment, or Presentment; one Moiety to the Poor of the Parish where the Offence is committed, the other to the Informer, and double Costs, so as such Suit, &c. be within 4 Months after Sale of such Butter.

By the said Statute of 3 & 4 Ed. 6. Justices in Sessions may restrain the Retailing of Butter and Cheese.

*A Warrant to distrain for the Twenty Shillings
Forfeiture.*

To the Constable of, &c.

Shff. II. **W** Hereas *T. P.* of *H.* in the County aforesaid, *5 W. & M. cap. 7.*
Cheesemonger, hath been duly convicted be-
fore me upon Oath of, &c. That he the said *T. P.* did mix in
a Firkin of bad Butter with good, after the same was sold to
J. S. of, &c. after the Mark of the said *J. S.* was set on the said
Firkin; by reason whereof, he hath forfeited the Sum of 20 *s.*
to be equally divided between the Poor of the Parish of *A.*
where the said Offence was committed, and the Informer, ac-
cording to the Statute in that Case made and provided: These
are therefore in Her Majesty's Name, to command you to levy
the said Sum of 20 *s.* so forfeited as aforesaid, by Distress and
Sale of the Goods of the said *T. P.* restoring to him the Over-
plus, if any such shall happen to be, after your Charges for ta-
king the said Distress shall be deducted. Given, &c.

Warehouse-keeper, Weigher, Searcher, or Stripper of
Butter, &c. must receive it, and take Care of it till it is ship-
ped, and must ship it on the next Vessel which shall come
to carry it to *London* (except the Owner of the Butter order
the contrary) and shall receive of the Owner 2 *s.* and 6 *d.* for
every Load, and no more, and so proportionably; and if
they or Servants shall refuse to receive, &c. or take Care of
the Goods, or to ship them, being convicted before a Ju-
stice by Oath of one Witness, &c. shall forfeit for every
Firkin 10 *s.* and for every Wey of Cheese 5 *s.* to be levied
as aforesaid.

Warehouse-keepers, &c. shall enter into Books, the Time
when Butter is received, the Quantity, and Owner's Name,
and when shipped, the Master's and the Vessel's Name, and to
whom consigned, and the Book shall be opened for any one
to view: Warehouse-keeper neglecting any of these Matters,
being convicted as aforesaid, forfeits for every Firkin, and for
every Wey of Cheese 2 *s.* and 6 *d.* and for every other of the
said Offences 2 *s.* and 6 *d.* to be levied as aforesaid; and if no
Distress, the Justice may commit the Offender till the Pe-
nalty is satisfied.

Masters of Vessels refusing to take in Butter, &c. before
the Vessel is laden, shall forfeit, being convicted, for every Fir-
kin so refused 5 *s.* and for every Wey of Cheese 2 *s.* and 6 *d.*
to be levied as aforesaid; one half of all the Forfeitures to
the Poor, and the other to the Informer.

This

This Act excludes not Cheesemongers free of *London* to send their own Vessels, or such as they shall hire for their own Goods; neither doth it extend to the Counties of *Lancaster* and *Chester*, nor to the County of the City of *Chester*.

* The Appellee.

Persons may appeal from the Justices to the next Sessions; Determination shall be final: But the Appellant must first enter into a Bond of 20*l* Penalty to the * Person accused, with one or more Sureties, such as the Justice shall approve, to pay Costs, in case the Appellant is not relieved within a Month after the Appeal determined; the Costs to be allowed by Justices in Sessions.

Buttons.

14. Car. 2.
cap. 13.
4 & 5 W. &
M. cap. 10.

THE Importation and Exportation of Buttons made of Hair, Silk or Thread, is prohibited; they who sell or expose such imported Buttons to Sale, forfeit for every Offence 50*l*.

The Importer forfeits 100*l*. besides the Buttons, one Moiety to the Queen, the other to the Informer, who shall sue for it in any Court of Record within a Year after the Discovery of the Offence.

The Justices may issue out Warrants to seize Foreign Buttons.

10 Will.
cap. 2.

And because many People were maintained by making Buttons or Needles; therefore it was enacted, That no Person shall make, sell, or set on Clothes, any Buttons made of Cloth, Serge, Drugget, Frize, Camblet, or other Stuffs of which Clothes are usually made, or Buttons made of Wood only, and turned in imitation of other Buttons, upon Forfeiture of 40*s*. per Dozen, one Moiety to the Queen, the other to the Informer, to be recover'd by Action of Debt, &c.

But this Statute is eluded, by making Buttons of Horn, which are now usually worn by the Common People.

The Warrant to seize Foreign Buttons.

Suffen ff. **W**HEREAS Complaint hath been made unto me, That several Parcels and Quantities of Hair-Buttons, and other Foreign Buttons, have been lately * imported into this County, contrary to the Laws and Statutes of this Realm: And whereas T. P. of *Gr.* is suspected to have such Buttons so imported in his Possession; These are therefore to authorize and require you to enter

* Bartered,
fold or ex-
changed.

Into the Shop, Ware-House, or Dwelling-House of the said T. P. the same being open, and to search for and seize all Foreign Buttons whatsoever which you shall there find, imported contrary to the Laws made and provided for prohibiting the Importation thereof. And hereof fail not, &c.

Cattle. See Pasture.

Buying of Cattle must be in open Fair or Market, and they must not be sold again in the same Fair or Market; the Forfeiture is double the Value. 3 & 4 Ed. 6. cap. 19.

Buying and Selling alive within five Weeks afterwards, the Forfeiture is double the Value; he must keep them for that Time in some Pasture. 5 & 6 Ed. 6. cap. 14.

This Offence is to be determined in Quarter-Sessions, by Inquisition, Bill, Presentment, Information, or Testimony of two Witnesses upon Oath: Justices may appoint one Moiety for the Queen, and award a *Fiari Facias* or *Capias* to the Prosecutor for the rest.

Offence must be prosecuted within two Years after 'tis committed.

There was an Action brought in the Sheriffs Court in London upon the Statute before-mentioned, and it was held, That it being a Penal Law, the Prosecution should be as directed by the Statute, *viz.* at the Sessions. *Latch.* 192.

An Information upon the Statute 3 & 4 Ed. 6. cap. 19. for buying Cattle out of a Market.

Suffex ff. **R**. N. *Qui tam pro Domina Regina quam pro seipso in hac parte sequitur venit hic in Curia in propria persona sua 15 die Januarii, Anno, &c. & tam pro eadem Domina Regina quam pro seipso dat Curia hic intelligi & informari quod J. O. nuper de, &c. 21 die Novemb. Anno, &c. & diversis aliis diebus & vicibus inter prædict. 21 diem Novemb. & diem exhibitionis hujus informationis amebat extra feriam vel mercatum videlicet apud H. in Com. prædict. quodam T. P. de, &c. & de diversis aliis personis præfat. J. O. incognitis decem vitulos pro-
tiii cujusmodi vituli prædict. viginti solidorum contra formam Stat. in hujusmodi casu edit. & provis. unde præd. J. O. qui tam, &c. petit advisamentum Curia in præmissis ac quod præd. T. P. forisset. viginti libras videlicet duplicem valorem vitulorum præd. sic per ipsam empt. contra formam Statut. præd. & quod idem J. O. qui tam,*

*tam, &c. habere valeat medietatem inde juxta formam Statuti
præd. &c.*

In an Information brought for buying Cattle, and selling them again in the same Market, the Judgment must be *quod capiatur*, and not in *Misericordia*, because 'tis a Contempt, and punishable by Imprisonment. Godb. 349.

Information for buying of live Cattle, and selling them again within five Week. 5 & 6 Ed. 6.
cap. 14.

Two Witnesses.

R. N. *Qui tam, &c.* (as before) *quod J. S. nuper de H. in Com. &c. 21 die Novemb. Anno supra dicto & diversis aliis diebus & vicibus inter præfat. 21 diem Novemb. & diem exhibitionis hujus informationis apud H. præd. in Com. præd. emebat de diversis personis præfat. R. N. qui tam, &c. adhuc ignot. viginti boves viros pretii cujuslibet bovis præd. quatuor Librarum ac quod idem J. S. eosdem boves viros non custodivit & depastus fuit per spatium quinque septimanarum in suis propriis domibus, terris, firmariis, aut in talibus terris ubi habuit herbagium vel communiam pastura per concessionem sive præscriptionem nec in aliquo eorundem, sed præd. J. S. infra tempus præd. ult. mentionat. præd. viginti boves apud H. præd. in Com. præd. viros revendit contra formam status. in hujusmodi casu edit. & provis. & quod præd. J. S. forisfac. centum & octoginta libras legalis moneta Angliæ videlicet duplicem valorem catallorum præd. sic per ipsum modo & forma præd. empt. & illicite revendit. unde idem R. N. qui tam, &c. petit advisamentum Curie in præmissis ac debitum legis processum versus præfat. J. S. in hac parte fieri quodque ipse idem R. N. qui tam, &c. medietatem forisfact. præd. habeatur juxta formam status. præd. &c.*

Carriages, vid. Soldiers.

Carriers.

3 & 4 W.
& M. c. 12.

THE Justices, in Easter-Sessions every Year, may assess the Price of carrying Goods by Land by any common Carrier, and may certify to the Mayors and Officers of each Market-Town, the Rates, &c. to be hanged up in some publick Place.

Carrier

Carrier taking above such Rates, forfeits s. l. to be levied by Distress by Warrant from Two Justices where the Carrier doth reside, to the Use of the Party grieved.

Carriages on which Goods are carried for Hire, must not be drawn in any common High-way with above Eight Horses, or Eight Oxen and one Horse, or Six Oxen and Two Horses, or Four Oxen and Four Horses in Pairs: Except Carriages employed in carrying

Ammunition, } Corn unthrash'd, } Hay, } employed
Artillery, } Coals, } Husbandry, } in it.

Materials for } Stones, } Service of }
Building, } Straw, } the Queen, } Timber.

The Owner of a Waggon or Carriage forfeits 40 s. Two Thirds to the Use of High-ways, the other to the Informer, to be levied by Distress on any of the Horses; which may be sold after Three Days.

A Warrant to levy the Penalty of 40 s.

To the Constable, &c.

Suffex ff. **W** Hereas T. P. of, &c. in the County aforesaid, Yeoman, hath this present Day made Oath before me J. S. one of Her Majesty's Justices of the Peace for this County, That S. A. of, &c. did upon the Fifth Day of December last travel with a Waggon, of which he was then the Owner, drawn through the Parish of H. in this County in the Common High-way, with Nine Horses, contrary to the Statute in that Case made and provided; for which Offence he hath forfeited the Sum of 40 s. These are therefore to require you forthwith to levy the said Sum of 40 s. upon the Goods and Chattels of the said S. A. rendring to him the Overplus, if any shall happen to be after reasonable Charges deducted for taking the said Distress, and the said Money, when levied, to dispose as followeth; that is to say, Two Third Parts thereof to the Surveyors of the High-ways within your Parish, to be employed for and towards the Repair of the said High-ways; the other Third Part to the said T. P. for discovering of the same. Given, &c.

Indictment against a Carman for stopping of a Way.

Suffex ff. **JUR'** &c. quod J. A. nuper de, &c. 19 die Novembris, Anno, &c. vi & armis apud Paroch' præd', in Com' præd' in communi alta via Regia ibidem vocat', &c. quandam

K

Garn

Curiam (Anglice, a Carr) illicitè posuit & locavit, & poni & locari causavit, & sic posuit & locat' voluntar' remanere permisit per spatium quatuor horarum apud Paroch' prædict' in Com' prædict' ratione inde commissa, alia via Regia prædict' per totum tempus prædict' apud Parochiam prædict' in Com' prædict' coarctat' & obstruat' fuit, ita quod Ligai & Subditi dictæ Domine Regine per & trans altam & communem viam Regiam prædict' advenire & ibidem in transire & redire non potuerunt prout debent & solebant, ad grave & commune nocumentum Subditorum dictæ Domine Regine per communem altam viam Regiam prædict' transeuntium, in malum exemplum aliorum in consimili casu delinquentium, & contra pacem &c.

Certiorari.

THis is a Writ directed to the Justices of the Peace, issuing out of the Chancery, and then 'tis returnable in *Cellaria nostra*; or out of the Queen's Bench, and then 'tis *Nobis mittatur*; or out of the Common Pleas, and then 'tis *coram Justiciariis nostris de Banco*; and the Justices must make a Return accordingly.

It was formerly held, That if delivered after the Return-Day, yet the Justices ought not to proceed, because the Words of the Writ are *coram Nobis*, &c. & *non alibi*. And 'tis still held, That 'tis a *Superfedeas* by Reason of those Words *non alibi*.

Yelv. 32.

Stiles 359.

This Writ may be either to remove an Indictment, or the Tenour thereof, or a Recognizance, &c. And it removes the whole Record; and therefore no *alias Certiorari* is to be allowed.

21 Jac. c. 18.

But 'tis not to be allowed, unless the Party indicted will be bound with Sureties (such as the Justices shall approve) to pay the Prosecutor such Costs and Damages as the Justices shall assess within a Month after Conviction.

5 & 6 W.
& M. c. 5.

And by a later Statute, 'tis not to be granted in Term-time but upon Motion in Court; and the Party who desires it, must find Bail. (*Viz.*)

* Recognizance and Certiorari must be

certified in B. R. and there filed; and the Name of Prosecutors endorsed.

If the Party desiring the *Certiorari* be convicted, then B. R. may give Costs; and if not paid within Ten Days after Demand, then upon Affidavit made of the Refusal, an Attachment goes, &c. and the Recognizance not to be discharged till Costs paid.

In Vacation, any Judge of B. R. may grant it. He must endorse his Name, and the Name of the Party desiring it, and before the Allowance the Party must find such Sureties as aforesaid.

And by a subsequent Statute a Recognizance taken before a Judge of B. R. with like Condition, as in the former Act, which the Judge must mention on the Back of the Writ, and subscribe his Name, shall be as good as if taken before a Justice of Peace in the proper County. 2 & 9 W. cap. 33.

The Condition of the Recognizance where the Certiorari is brought to a Justice of the Peace, and not to a Judge of B. R.

THE Condition of this Recognizance is such, That whereas the above-bounden R. O. hath prosecuted a *Certiorari* returnable, &c. to remove into the *Queen's Bench* an Indictment found against him at, &c. for, &c. If therefore the said R. O. shall plead to the said Indictment so removed, as aforesaid, so as Issue may be joined upon the same; and shall likewise at his own Charge procure the said Issue to be tried at the next Assizes after the Return of the said *Certiorari*, to be held for the County of, &c. where the said Indictment was found; then this Recognizance to be void, &c.

The Return of a Certiorari endorsed on the Back of the Writ.

Executio istius Brevis patet in quadam Scheda huic Brevi annexa.
R. B. Ar.

The Schedule, or Certificate of the Record, in a Piece of Parchment by its self, and filed to the Writ.

EGO R. B. Ar. unus custod' Pacis ad Pacem Domina Regina in dioc' Com' Suffex conservand' necnon ad diversas Felonias, transgression' & alia malefacta in eodem Com' perpetrata audient' terminand' assign' virtute istius Brevis mihi deliberat' indicta-
tione illud unde infra fit mentio una cum omnibus illud tangentibus
K 2 in

* Or into
the Queens
Bench, &c.

*in Cancellariam dicti Domi Regine distincte & aperte sub sigillo
meo certifico. In cujus rei testimonium ego prefat' R. B. his pre-
sentibus Sigillum meum apposui, Dat', &c. apud, &c.*

Where it
has been
granted.
Cinque-
Ports.
Cro. Car.
252, 263,
332.

It was formerly doubted, whether it would lie to the Cinque-Ports to remove an Indictment for Felony; but since it hath been granted to remove an Indictment out of the Court of *Rumney*, upon a Suggestion, That the Defendant could not have an indifferent Trial before the Steward there, tho' it was insisted, that they had an ancient Charter to exempt them from the Jurisdiction of B. R. and from Justices of Oyer and Terminer, and of Assize; but *per Curiam*, a Charter of Exemption from the Oyer and Terminer was never heard of before. *Mich. 8 Will. Rex vers. Bird.*

Certiorari's have been allowed to remove Indictments for Murder out of a County Palatine; for tho' the King hath granted them *Juris Regalia*, yet he did not thereby intend to exclude himself. *March. 165.*

Wales.

It hath been granted to remove into B. R. an Indictment of Barrettry taken before Justices of Peace in *Wales*, because it was at the King's Suit. *Poph. 144. Latch. 12. 2 Cro. 484.*

Cro. Car.
332.

A Person was indicted at the Grand Sessions in *Anglesea* for *Petit-Treason*; and notwithstanding the Statute of 26 H. 8. cap. 6. which allows Indictments in Cases of Felony to be inquired in the Counties adjoining, yet it was doubted whether it should be granted or not, because the Indictment was taken in a *Welsh* County.

1 Vent.
93, 146.

But now this Doubt is resolved; for it hath been granted in Cases of Manslaughter and Murder, where the Indictments have been found in *Welsh* Counties.

34 H. 8.
cap. 26.

'Tis true, Eight Years after the Statute of 26 H. 8. another Act was made, which gave the Justices in *Wales* Power to hold Pleas of the Crown in as large manner as the Chief Justice of *England* may do: But this is not a Repeal of the former Act; for tho' it gives them Power, &c. it doth not exclude B. R. without Negative Words.

1 Mod. 68.

Cinque-
Ports.

It was awarded to the Mayor and Justices of *Dover*, before whom an Indictment of Felony was taken, and not to the Lord Warden, &c. because the Justices hold Plea by Virtue of their Commission of Peace, and not by their ancient Charters. *Cro. Car. 252, 264.*

Justices.

Pending one Indictment for a forcible Entry, another was brought against the same Person for the same Force, &c. The first Indictment was removed, and the Justices awarded Restitution upon the second; but before it was executed, a *Certiorari* was delivered to one of the Justices to remove the second, who made some Delays till the Party had Restitution; and that Indictment being also removed, the Complaint

nant had Restitution, and the Justice was reproved by the Court, because the Delivery of the Writ is a Prohibition to their Proceedings. *Relu. 31.*

It may be awarded to remove Orders from an inferiour Jurisdiction, where the denying it is not expressly enjoined by some Statute; as in Cases of Bastardy, the Act says, That the Two next Justices may take order, &c. and no *Certiorari* is mentioned; which shews, that the Law-makers intended that such Order might be removed, otherwise they would have enacted, that no *Certiorari* shall lie. *3 Mod. 95.*

Orders.

alderman

nobis

Leet.

Trade.

nobis

It hath been awarded to remove a Presentment in a Leet, upon the Statute of 5 *Eliz.* for using of a Trade not being an Apprentice; for tho' the Statute of 31 *Eliz.* saith, That Informations upon Penal Statutes shall be brought in the proper County where the Offence was done; and in a latter Paragraph of that Statute, 'tis enacted, All Suits for unlawful Games, and for not having Bows, &c. shall be prosecuted at the Assizes or Sessions of the County, or at the Leet, &c. and not elsewhere; yet this gives the Leet no new Jurisdiction, but such Offences only are intended, of which they had Cognizance before. *Sid. 289.*

Fine.

A Fine set by the Sessions upon the Grand Jury, may be removed,

Where it hath been denied.

Fine.

'Tis not grantable after a Fine estreated in the Exchequer, because it then concerns the Queen, and cannot be removed without the Consent of the Attorney-General. *Hardr. 409.*

Felony.

Nor to remove an Indictment of Felony out of an inferiour Court, without shewing some special Cause.

Excise.

It was denied to remove an Information before the Commissioners of Excise, because the Statute of 12 *Car. 2.* gives an Appeal to the Sessions, and a Clause that no *Certiorari* shall lie.

Forest.

It was denied for removing a Presentment before the Justices in *Eyre* for cutting of Wood in a Forest, for that would be to take away the Jurisdiction of those Justices who may punish Offences by the Forest Laws, which are not punishable elsewhere; the Party must first be convicted and fined. *Sid. 296.*

Sewers.

So it was denied to remove a Presentment before Commissioners of Sewers, &c. the Party suggesting, That he ought not to repair the Sewer, because it may be tried before the Commissioners as well as Nuisance in a Court-Leet; but if the Party will make Oath that a Traverse was denied, then it may be granted.

Privy
Sessions.

It hath been a Question, if a *Certiorari* be delivered at a privy Sessions, whether the Justices may not proceed, because the Statute saith, It must be delivered in open Sessions; which must be intended the General Quarter-Sessions.

Constable.

It was denied to remove an Order of Sessions for electing of a Constable, that the Order might be confirmed by B. R. but the Court made a Rule for a *Mandamus* to swear him. *Stiles* 127.

London.

It was denied to remove an Information exhibited in the Mayor's Court of London against a Woodmonger, grounded upon an Act of Common-Council, unless such Act appear to be against Law. *Stiles* 211.

London.

The Record it self is not removed out of London, but *Temper* only; for by Vertue of their Charter, the Record remains there still; and therefore if there should be a Mistake in the Return, it may be amended; but 'tis a Question Whether this may be done in any other County? And 'tis for this Reason that no *alias Certiorari* will be granted, because the Record is removed in all other Places by the first Writ. *Sid.* 155, 230.

The Indictment was taken Jan. 25. and the *Certiorari* was of Michaelmas Term preceding; the Record was not removed. *Sid.* 317.

Forgery.
Perjury.
Appren-
tice.

It is always denied to remove Indictments of Forgery or Perjury. *Sid.* 54. Because when removed, seldom presented.

The Overseers put a poor Boy to be an Apprentice; the Master, upon Complaint to the Justices, that he was no Trader, but a Gentleman, had no Relief: Then he moved for a *Certiorari*, but it was denied; because the Overseers, with the Assent of the Justices, have Power to place an Apprentice upon any Person of Ability.

Return thereof.

Sewers.

A *Certiorari* was directed to the Commissioners of Sewers, and brought to their Clerk, who refused to allow it out of Court; but the Commissioners ought to make the Return. *Mich. 8 Will. B. R. Stiles* 90. *contra.*

The Justices must retain it, tho' Bail be not put in according to the Statute. *Sid.* 70.

The Return of a *Certiorari* was in Paper, and for that Reason held not good. *Mich. 4 Will. B. R.*

The Party cannot waive a *Certiorari* when it is once delivered, for then the Court will require a Return thereof. *Hil. Will. B. R.*

Challenge.

Challenge. See Juries and Misdemeanour.

THE proper Signification of this Word in the Law, is to except against some who are returned of the Jury, And this Exception or Challenge may be, either

To the Array. }
To the Polls. }

A principal Challenge to the Array may be,

1. In respect of Partiality or Kindred in the Officer who returned the Pannel.

The Plaintiff challenged the Array, because the Sheriff was *Cousin* to the Defendant, and in shewing how it appeared that he was *Cousin* to his Wife; but because it did not set forth that he was a-kin to her *tempore panelli arriati*, it was not quashed, for he might marry her afterwards. *Dyer* 38.

Cro. Eliz.
23.

2. If any Juror is return'd at the Desire of the Party.

3. If either Party have an Action of Debt against the Sheriff, but not *à converso*.

In all these Cases, the whole Array must be quashed; but if one Man be sworn, the Array cannot be challenged,

Stiles 233.

1. *Propter honoris respectum*; as if a Peer be returned of the Jury in the Case of a common Person.

Principal
Chal-
lenge to
the Polls.

If a Peer is *Defendant*, there must be a Knight of the Jury, or the Array may be challenged; but it hath been a Question, if he is a *Plaintiff*, and will not challenge, for that there is no Knight returned, Whether the Defendant might do it? And it seems he may not. *Dyer* 107. b.

2. *Propter defectum patrie libertatis*, as Aliens; *aut annui census*, as not having 40 s. by the Year.

3. *Propter Affectum*.

4. *Propter delictum*, as Persons attainted or outlawed.

This Challenge to the Polls, is a Challenge to the particular Persons.

And as to the second Cause, *viz. annui census*, it will not be unnecessary to know how much a Man ought to have to be a Juror by the ancient Laws of this Realm.

Before any Statute was made concerning the Quality of a Juror, his Sufficiency was left to the Discretion of the Justices.

Afterwards by the Statute of 2 H. 5. cap. 3. he was to have 40 s. per Annum, which by 27 Eliz. cap. 6. was encreased to 10 l. per Ann. either of Freehold or Copyhold.

Only in Corporations, Trials of Felonies may be by Free-men worth 40 l. in Goods, tho' they have no Freehold, per 23 H. 8. cap. 13. and so the Law is in other Cases. *Raymond* 486.

3 Propter Affectum.

As to this Matter there is a principal Challenge, when there is either express Malice or Favour; as if the Juror be of Kin to either Party, let it be never so remote; or if there be any Affinity by Marriage; nay, if he be Godfather to either.

If he hath given a Verdict already in the same Cause; but then he must produce the Record, if he will conclude it as a principal Challenge.

But yet in the Case of the Regicides, it was resolved, That if an Indictment is found against several, and some of them are found guilty by a Jury, and some of those Jury are returned to try the rest in that Indictment, 'tis no Challenge to say, That they have already given their Verdict against others, who were indicted for the same Offence; because in Law 'tis a several Indictment against every one, and the Jury are to give their Verdict upon particular Evidence against each Criminal; and therefore it doth not follow, that because they have found one guilty, they will find the rest so too. *Keil. 9.*

This is very true, but 'tis a strong Presumption that all will be found guilty.

The Question was concerning a Way, and the Juror was challenged, because he had affirmed before the Trial, That there was a Way, and that it would be an Injury to the Country if it should be found otherwise; and the Challenge was allowed.

Sid, 244.

Indictment in B. R. for a Battery committed at Canterbury, and one of the Jurors was challenged, because he had been of the Grand Jury who found the Battery, and it was allowed.

It was likewise allowed, because the Prosecutor had been entertained at the House of a Jury-man. *1 Vent. 309.*

These Challenges to the Favour are many, which must be left to the Discretion of two Tryors, who are sworn by the Court out of the Jury returned to try whether there is any Cause of Favour or not.

If a Juror is served with a Subpoena as a Witness on either Side, or hath declared how he will find his Verdict, or for whom, these are good Challenges to the Favour. *1 Bull.*

Challenge.

137

But there can be no Challenge, either to the Array or to the Polls, till the Jury is full, and that as well by a Tales, as if all on the principal Pannel appear; and 'tis too late after they are * sworn. *Hob. 235.*

* Yelv. 3.

In an Appeal of Manslaughter, a Man may challenge Twenty Persons peremptorily, as well as upon an Indictment of Murder; 'tis true, at Common Law a Man might have challenged any Number peremptorily under Three full Juries, and therefore he might challenge Thirty-five without shewing any Cause, and if he challenged more, he was to be hanged: But by the Statute of 22 H. 8. 'tis now reduced to Twenty; and if he challenge more, there is no Penalty, but the Court is to over-rule the Challenge.

What Number may be challenged.

Moor 12.

Only in Case of Treason and Petit-Treason he may challenge Thirty-five, *per 1 & 2 Phil. & Mar. cap. 10.*

Two were arraigned for a Robbery, and they severally pleaded, Not Guilty; a *Ven. fa.* was returned, they both challenged Three of the Jury; then one of the Robbers challenged the Four next in the Pannel peremptorily, but the other did not join in that Challenge; and those Four were sworn of his Jury, and found him guilty: And since there was but one *Ven. fa.* the Question was, Whether a Juror could be withdrawn, and allowed in one and the same Pannel? And it was held he might; for no Judgment was given that he should be withdrawn, but that he should be set aside for a while; for probably the Party might release his Challenge by Consent of the Attorney-General.

Dyer 152. B.

A Man challenged Thirty-six, and it was formerly held, That he should be pressed, because he refused the Law: This being not a satisfactory Reason, 'tis now held, That he shall be hanged.

The Form of a Challenge to the Array, because the Sheriff who returned is of Kindred to one of the Jury.

ET super hoc idem T. P. calumniat' arraignment' Pannelli pradi' quia dicit quod Pannellum illud arraignment' fuit per quendam J. L. nuper Vic' Com' pradiet' consanguineum pradiet' J. O. videlicet Filium D. Sororis B. Matris pradiet' J. O. & per quod Pannellum illud allegatione pradi' cassetur, &c.

Where

Where the Challenge is for that the Pannel was returned at the Instance of either Party.

The Challenge tried, and quashed the Array.

ET super hoc prædicti T. calumniat' arraignmentum Pannelli illius quia dicit quod Pannellum illud arraiait' fuit per J. L. nuper Vic' Com' prædicti ad denominationem prædicti J. B. & in favorem ejus, quæ quidem Calumniæ per Triatores inde Jur' comperta est vera.

Champerty.

TIS an Offence, viz. where any Person expecting Part of the Thing in Variance, doth by himself, or any other, move or prosecute the Suit at his own Costs and Charges: The Punishment is a Fine, and Imprisonment for Three Years.

2 Inst. 208.
1 Inst. 368.
B.

My Lord Coke tells us, That *Champerty* is Maintenance, but not *converso*; so that the Difference between these Offences seems to be thus: *Champerty*, is where the Party prosecuting is to have Part of the Land or Goods, &c.

Maintenance, is where the Prosecutor is to have no Part of the Thing in Variance.

An Indictment for Champerty.

Artic. super Chart.
cap. 11.

Suffex ff. J. U. R. &c. quod cum de communi Consilio Regni Regis Angliæ provisum sit, quod nullus Minister Domini Regis nec aliquis alius manteneat placita querelas vel negotia quæ sint in Curia Dom. Reg. de terris, tenementis, aut aliis rebus quibuscumque pro parte rei petite, vel alio proficuo per conventionem factam inde habend. nec aliquis jus suum sub hujusmodi conditione alteri dimittat prout in eodem Statuto plenius continetur. Quidam tamen J. O. decimo quinto die Decembris, Anno, &c. * Quoddam placitum in quela quæ fuit in Curia dicti Dom. Reg. coram ipso Dom. Reg. per Breve ejusdem Reg. inter T. P. & J. S. de placito debiti triginta librarum quas idem T. P. de præfato J. S. exigebat pro parte debiti præd. & damnorum in ea parte recuperand. habend. viz. pro dimidio delicti & damnorum illorum per conventionem inter præd. J. O. & T. P. fact. apud L. in Com. præd. assumpsit manteneand. & mantenuit contra pacem Dom. Reg. nunc & contra formam Statuti præd. in hujusmodi casu edit. & provis. &c.

* If in Chancery, then say, Quoddam negotium quod fuit coram Domino Rege nunc in Cancellaria sua apud Westm. in Com. Midd. per Breve Dom. Regis. de Subpana inter, &c. pro, &c. sit.

An Indictment for Maintenance;

Suffex ff. JUR. &c. quod J. O. de, &c. in Com. pred. Toman. quandam querelam que est in Curia Dom. Reg. nunc coram ipsa Rege inter T. P. querentem & R. B. defendentem de placito quod idem R. reddat eidem T. quinquaginta libras quas ei debet, & injuste detinet prediff. primo die Decembris, Anno, &c. supradicto apud L. in Com. prediff. ex parte prediff. R. manifestavit & sustentavit in iustitia manifestam retardationem & distubantiam. ac in pred. Dom. Reg. nunc contemptum & pred. R. B. gravamen ac contra formam Statut. &c.

Chance-medly, See Homicide.

Church, See Divine Service.

Church-wardens,

ARE very ancient Officers, and by the Common Law are made a Corporation to take Care of the Goods of the Church, the Property whereof is in them.

They are to be chosen, by the Canon * Jac. 1. by the joint Consent of the Minister and the Parishioners; and if they disagree, then the Minister is to chuse one, and the Parish another every Year in the Easter-Week, unless there is a Custom to the contrary, which must be observed. 2 Roll. Abr. 287. * An. 1604.

When he is chosen by Vertue of any Custom, tho' against the Canon, yet if the Archdeacon refuses to swear him, a Mandamus will lie to compel him to it. And if the Archdeacon should refuse one who is chosen, and appoint another against the Consent of the Parish, B. R. will grant a special Writ to the Bishop to swear him, *vel causam significare quare non.* 1 Vent. 266. Palm. 50.

An Attorney cannot be made a Church-warden; and if he is sued in the Spiritual Court, being chosen to that Office, he may have a Prohibition. 2 Roll. Abr. 272. who may not be a Church-warden.

He is to see that the Parishioners come to Church every Sunday and Holiday, and to present the Names of such who are absent to the Ordinary, or to levy 12 d. for every Offence, per Stat. 5 & 6 Ed. cap. 1 Eliz. cap. 1. His Duty about profaning the Sabbath.

If he find any in an Alehouse, &c. the Person is to forfeit 3 s. 4 d. and the Master of the House 10 s. 1 Jac. cap. 5.

They

Of Lands
& Goods
of the
Church.

* But they
may reco-
ver such
Goods by
a Bill in
Equity.

They are a Corporation only as to Moveables, viz. to take Goods, but not Lands, for the Use of the Church; for they cannot prescribe by the Name of Church-wardens to have Lands, &c. neither can they have any Action at Common Law to recover Goods of which they were never* possessed: But if once they had Possession, then they may have an Action of Trespass, &c. and recover Damages to the Use of the Parish, if such Goods are taken away or abused, and they may have an Appeal of Robbery, if stolen; but they cannot sell such Goods, or dispose of them, without the Assent of the Parish; if they do, the Parishioners may chuse new Officers, who may bring an Action of Accompt against them.

If any Thing belonging to the Freehold is broken or cut down, or the Walls, Windows, Doors, or Trees in the Church-Yard, &c. the Parson or Vicar, and not the Church-wardens, shall have an Action.

Godb. 279.

But the Church-wardens may maintain an Action for defacing a Monument in the Church.

2 Cro. 367.

And so may the *Heir by Descent* have the like Action against any one who beats down or defaces *Crests of Arms*, or Monuments in the Church or Church-Yard.

An Action of Accompt was brought by the Church-wardens against their Predecessors for a Bell, in which they declared, *Quod reddant eis computum de bonis Ecclesie*; it should have been *de bonis Parochianorum*; for which Reason the Court inclined that the Declaration was ill. 1 Vent. 89.

Distur-
bance
in the
Church.

If the Minister is disturbed, the Punishment is three Months Imprisonment without Bail, per 6 Ed. 6. cap. 4.

To disturb in Church, Chappel or Congregation, permitted by the Statute of 1 W. & M. or to misuse the Teacher, must find Two Sureties to be bound in Recognizance in 40*l.* and in Default thereof may be committed till next Quarter-Sessions, and upon Conviction there, forfeits 20*l.*

Proof by Two Witnesses before a Justice of Peace.

Arresting
a Mini-
ster.

Going or returning from Church, may be punished by Indictment, or bound to Good Behaviour: The Offence is the same if a Lay-man be arrested. Quarrelling in Church or Church-Yard, if a Lay-man, may be suspended *ab ingressu Ecclesie*; if a Clergy-man, *ab Officio*. But if a Weapon is drawn with an Intent to strike, or Stroke given, the Party may be convicted at Sessions by Verdict, his own Confession, or Oath of Two Witnesses, and Judgment to lose one of his Ears by cutting it off, and if no Ears, to be marked in the Cheek with the Letter F. 5 & 6 Ed. 6. cap. 4.

Church-wardens.

141

To apprehend those who disturb the Minister, &c. and to bring them before a Justice of Peace.

They are to present those who sit *Tippling*, &c.

They are to execute Warrants against such who *profane* the Lords-day, and may levy the Forfeiture of 12 d. by Warrant from a Justice, &c. on those who curse or swear.

They are to join with the *Constables* in making *Rates* for Relief of the Poor, &c. and in choosing Surveyors of the High-ways, and appointing Days to work.

They are to accompt at the End of the Year, and to deliver what remains in their Hands, to the new Church-wardens, by a Writing indented; if they refuse, they may be presented at the next Visitation, or the new Officers may have an Action against them.

If he is cited in the Ecclesiastical Court after he hath delivered up his Accompt, and should be excommunicated, an Action on the Case lies against him at whose Prosecution he was cited.

If they are situate in a Corporation, then they may be united by the Mayor, Justices, or the greater Part of the Parish, with the Consent of the Patron, and by the Bishop of the Diocese. 17 Car. 2. cap. 3.

And the Parishioners of the Church united, are bound to contribute to the Repairs and Ornaments of the Church to which they are so united. 4 & 5 W. & M.

The Ordinary hath a proper Jurisdiction over them, and may place and displace whom he thinks fit: But where Custom or Prescription interposeth, there his Jurisdiction ceaseth, and the Temporal Courts give Remedy in Cases of Disturbance, &c.

A Man may have a Seat in a Church appendant to his House, and may prescribe, that he, and all those whose Estate he hath, &c. usually sat there and repaired the Seat, and in such a Case a Prohibition lieth; but one cannot prescribe to a Seat in the Body of the Church generally, without shewing that he, and all those, &c. have, Time out of Mind, repaired it. Roll. Abr. 2 Pars 288.

The Case is the same in an *Iste* of a Church, for such a Prescription to repair the *Iste*, and to sit there with his Family, makes the *Iste* peculiar to his House, and he cannot be displaced by any Body; but sitting and burying there without Repairing, doth not make it so.

But the Ordinary hath no Power over Seats in private Chapels belonging to particular Families. Roll. Abr. 2 Pars 288.

Are

Wherein they have an Authority equal with other Officers.

Wherein they are to be joined with others.

Accompt.

Raym. 418.

Union of Churches.

Seats in Churches.

2 Cro. 367.

Charges for
Repairs.

Are to be made by the Church-wardens, and greater Part of the Parishioners present, after a general Notice given for that Purpose. *5 Rep. 67. 1 Vent. 367.*

The Charge is in respect of the Lands; and therefore if the Owner lives in another Parish, he shall be rated to repair in the Parish where the Lands lie, unless he let it by Lease, and then he shall be charged in respect of the Rent reserved thereon.

2 Roll.
Rep. 270.

And in such Case, if the Lessee or Farmer is sued for Repairs (as he may) because the Church-wardens may not know who is Landlord, such Lessee may plead to the Libel, That he is only the Farmer; which appearing to the Court, the Tax shall be divided between his Landlord and him; that is, The Landlord shall contribute in Proportion to the Rent reserved, and the Tenant for so much as the Land is worth above the Rent, for Lands are not usually let at the utmost Rent.

A Man had a Lease of a Stall in a Market-Town where he sold Goods once a Week, but lived in another Parish, he shall not be charged in the Market-Town. *2 Roll. 228.*

A Person living in one Parish, and occupying Lands in another, shall not be charged for the Ornaments of the Church where the Lands are, because the Inhabitants only are to be charged for Ornaments in respect of their Personal Estates. *2 Rolls Abr. 291.*

If there is a Chapel of Ease, which one Part of the Parish hath always used to repair, and to hear Divine Service there, but bury at another Church, they must contribute to repair that Church.

If the Parish is unequally rated, those who are grieved, must plead it in the Spiritual Court, being sued there, but they cannot have a Prohibition. *2 Roll. Abr. 291.*

Present-
ments.

Are usually made twice in a Year, whereof one Time is to be a Week before Easter, when the old Church-wardens are to leave their Office, and the new Ones are to be sworn; which they are not to be, till the other have given in their Presentments; and if they refuse, the Parson or Vicar may present, &c. They cannot be compelled to present oftner than once in a Year, except at the Visitation of the Bishop, and the Register is to receive but 4 l. for every Presentment.

The Spiritual Court tendred an Oath to a Church-warden, to present according to the Articles of the Bishop, in which were many special Things, as to present filthy Talkers, &c. and a Prohibition was granted. *1 Vent. 114.*

But if the Oath tendred had been to present according to the Ecclesiastical Laws, and the Articles are only offered by way

way of Direction, in such Case a Prohibition ought not to go. *1 Vent. 127. Hardres 364.*

The Articles commonly exhibited to them to make their Presentments, may be reduced thus :

Viz. To Things which concern { The Church.
The Parson.
The Parishioners.

And First, To those Things which concern the Church ; as

| | |
|--|--------------------------------|
| Alms, whether a Box for that Purpose. | Lord's Prayer in fair Letters. |
| Assessments, whether made for Repairs. | Marriage, a Table of Degrees. |
| Bells and Bell-Ropes, if in Repair. | Monuments safely kept. |
| Bible, whether in Folio. | Parsonage-house in Repair. |
| Canons, whether a Book thereof. | Church-yard well fenced. |
| Carpet. | Commandments in fair Letters. |
| Chest with three Locks. | Common-Prayer Book. |
| Church and Chancel in Repair. | Communion-Table. |
| Creed in fair Letters. | Flaggon. |
| Cups and Covers for Bread, &c. | Font. |
| Cushion for Pulpit. | Grave-stones well kept. |
| Desk for Reader. | Queen's Arms set up. |
| | Register-Book in Parchment. |
| | Surplice, whether any. |
| | Table-Cloth. |
| | Tombs well kept. |

2. Those Things which concern the Parson.

| | |
|------------------------------------|----------------------------|
| Articles 39, if read twice a Year. | May 29th, if observed. |
| Baptizing with Godfathers. | Marrying privately. |
| Canons, if read once a Year. | November 5th, if observ'd. |
| Catechising Children. | Peace-maker. |
| Common-Prayer, if read, &c. | Perambulation. |
| Dead, if he bury them. | Sacrament, if celebrated. |
| Doctrine, if he preach good. | Sedition, if vented. |
| Gown, if he preach in it. | Sick, if visited. |
| Homilies, if read, or he preach. | Sober Life. |
| January 30th, if observ'd. | Surplice, if wear it. |

3. Those

3. Those Things which concern the Parishioners:

| | |
|-------------------------------|---------------------------------|
| Adulterers, if any. | Marrying without Banns, |
| Alms-houses, if abused. | Licence, or at Unlawful |
| Ale-houses, &c. in Divine | Hours. |
| Service. | Sacraments received Three |
| Answering according to Ru- | Times in a Year, of all a- |
| brick. | bove Sixteen, whereof Ea- |
| Baptism neglected by Pa- | ster to be one Time. |
| rents. | School, if abused. |
| Blasphemers. | Seats, if Parishioners are pla- |
| Church, resorting to it. | ced in them without Con- |
| Dead, if brought to be bu- | tention. |
| ried. | Standing up. |
| Drunkards, if any. | Sundays, working therein. |
| Fornicators, if any. | Swearers, if any. |
| Legacies, if any given to pi- | Women, if come to be |
| ous Uses. | churched. |
| Marrying within prohibited | |
| Degrees. | |

Sid. 307.

A Church-warden was indicted, for that he, *Colera Officii sui corrupte & extorsive*, took a Silver Cup of S. S. for making him a *Gallery-Keeper* in St. Martin's Church: It was moved to quash this Indictment, because it was no Office, but an Employment under a Church-warden; and to make a Present for such an Employment, is no Offence; but it was ordered to be tried, whether the Cup was taken *corrupte & extorsive*.

A Warrant against one for not coming to Church.

To the Constable of, &c.

Suffex ff. **W** Hereas Oath hath been made before me, That J. O. of, &c. did not upon the Lord's Day last past resort to any Church, Chapel, or other usual Place appointed for Common Prayers, and there hear Divine Service according to the Form of the Statute in that Case made and provided: These are therefore to require you, &c. to bring the said J. O. before me to answer the Premises. Given, &c.

Vide plus in Titulo, Dissenters and Divine Service.

Church

Church, and Church-Yard.

ANY Man may build a Church or Chappel, but the Law takes no Notice of it as such, till it is consecrated; and therefore, whether Church or Chappel, it must be tried by the Certificate of the Bishop, which being done, the Parishioners ought then to repair it, and to keep up the Enclosures and Fences round it.

If a Question should arise, Whether 'tis *Ecclesia* or *Capella* belonging to the Mother Church, and any Proof can be made that Sacraments have been administred in the Chappel, and the Dead buried there, then 'tis accounted a distinct Church by the Law.

When 'tis built, neither the Ordinary or Church-warden 2 Cro. 367. can give Leave to bury there, but the Parson only, because the Freehold of the Soil is in him.

Amongst the Laws of King *Ina*, this was one, That he who fought in a Church should forfeit 120 s. And by some subsequent Laws, he who is convicted of striking with a Weapon there, shall have one of his Ears cut off; and if he hath no Ears, shall be burned in the Cheek with the Letter F which is for Fighting 5 & 6 Ed. 6. cap. 4.

A Man was indicted at the Sessions in *Glocester*, for striking with a Weapon in the Church-Yard; it was removed into B. R. and moved that he might be admitted to a Fine, which was denied, because the Statute appoints another Punishment as well as a Fine, viz. Loss of an Ear, &c. and therefore he ought to traverse the Indictment. Palm. 344.

Another was indicted upon the same Statute, for drawing his Sword in the Church, but it did not set forth that it was with an Intent to strike; and though it concluded *contra formam Statuti*, yet it was held void, for the Reason above-mentioned. Cro. Eliz. 231. 2 Leon. 188.

So where 'tis set forth *quod percussit*, if the Word *malitiose* is omitted, 'tis naught. Noy 171, 172. Noy 171, 172.

Indictment thereon.

Suffex ff. Jur., &c. quod J. O. de, &c. 19 die Decemb. Anno Regni, &c. vi & armis apud H. in Com' prad' in Cameterio Ecclesie Parochialis de H. prad' malitiose pugionem suum extraxit in quendam R. N. de H. prad' Tooman, ac cum prad' pugione prefat' R. N. adtunc & ibidem in Cameterio prad' percussit contra pacem dict' Dom' Reg' ac contra formam Statuti in hujusmodi casu edit' & prebit'.

Clergy.

Under this Title, it may not be improper to mention some Privileges the Clergy have by Law, which are not allowed the Laity : *Viz.*

Privi-
leges of
Clergy.

They are discharged of Purveyance.

They are not to serve in any Temporal Office, tho' they hold Lands, by Reason whereof other Men ought to serve ; and if they are chosen to any such Office, there is a Writ in the Register to discharge them.

They are not bound to serve in the Wars, neither are they to pay any Tolls or Pontage for the Goods which they have of the Church.

Before the 20 *Ed. 1.* they paid no Tenths to the King for their Ecclesiastical Livings, but to the Pope ; but in that King's Reign, their Livings were valued all over *England*, and the Tenths paid to the King ; and now, by the Statute of 26 *Hen. 8. cap. 3.* they are annexed to the Crown for ever.

If a Man in Orders is a Cognizee in a Statute, his Body shall not be taken in Execution, and if he is *Clericus Beneficiarius*, a *Levari facias* shall not be brought against his Goods, but a Writ to the Bishop to levy the Debt, *de bonis Ecclesiasticis*.

All which Liberties, and many more, are confirmed by *Magna Charta*, viz. *Quod Ecclesia sit libera.*

As to the Benefit of Clergy, it was introduced here by the Canon Law, exempting their Persons from any Temporal Jurisdiction. 'Tis a Privilege, on purpose to save the Life of a Criminal in certain Cases, if he was a Man of Learning, as accounted in those Days, for as such he might be useful to the Publick ; and as its Original was by the Law of the Church, so it was for some Time only allowed to Clerks in Orders : But this seems to be an Usurpation upon the Laity, because at first it was extended to any Person who could * read, he declaring that he had vowed or was resolved to enter into Orders, and the Reading was to shew that he was qualified ; so that Churchmen were not contented with the Exemption of their own Persons from Punishment, but would have all those who come amongst them exempted in like Manner. But afterwards, the Reading without a Vow to enter into Orders was held good, and now 'tis become a legal Conveyance of Mercy to both Clergy and Laity.

*The Temporal Courts judge of the Reading ; the Ordinary is only Ministerial.

But

But though the Ordinary usually tenders the Book, the Court are the proper Judges of the Criminal's Reading; and therefore where the Ordinary answer'd, *Quod legis*, the Court judged otherwise, and fined the Ordinary, and hang'd the Person.

So that the Ordinary is only a Ministerial Officer, to make a true Report to the Court; and he is commonly one of the inferior Clergy, and not the Bishop himself; and if he makes a false Report, 'tis a Personal Offence in him, and finable.

Anciently it might be claimed by the Party himself before or after Conviction, but never till the Offender was indicted, and then upon his Arraignment he might pray it: And this, my Lord Coke tells us, was very prejudicial to the Prisoner, because he lost his Challenges to that very Inquest, whose finding him guilty made a Forfeiture of his Goods, and likewise the Profits of his Lands till Purgation; and therefore afterwards, viz. in the Reign of H. 6. by the Advice of the Judges, it was not allowed till after Conviction, and so the Law now stands.

The Time
of Claim-
ing it.

At Common Law, the Court is not to tender it *Ex Officio*; 'tis true, they may in Discretion allow it where 'tis not claimed; but regularly the Criminal is to claim it as a Favour, and then the Court must allow it where 'tis by Law to be allowed.

I admit, that in the Reign of Jac. 1. it was resolved in the Case of *Goring* and *Deering*, upon an Appeal, that the Court might delay to call a Criminal to Judgment after a Conviction for Manlaughter, on purpose to make him liable to an Appeal.

But this was since denied to be Law in the Case of *Armstrong* and *Lisle*, Mich. 8 Will. (viz.) That since several Statutes have been made to extend the Benefit of Clergy to Persons in particular Cases, that the Court ought, *Ex Officio*, to call the Party to Judgment upon a Conviction of Manlaughter, and to allow him the Benefit of Clergy, if he prays it.

That to suspend or delay such Allowance, is to deprive him of that Defence by which he might prevent a Conviction of Murder upon an Appeal, and that 'tis a manifest Injury to the publick Justice, unless there is some legal Reason appearing out of the Record it self to justify such Delay; for since he may be found guilty either of Murder or Manlaughter upon the same Indictment, it would be unjust to hang him upon one Verdict, and not to allow him that Benefit which the Law hath given him to save his Life upon

the other, which will be not only to put it twice in Danger, but to subject it to the arbitrary Opinion of a Court, though he might be saved by Law.

'Tis both for the Benefit of the Queen and the Party, not to have the Allowance of the Clergy till after a Trial: Because, if convicted, the Queen may be intitled to the Forfeitures; and if acquitted, then he stands not in Need of this Privilege.

Now if a Man cannot read where Clergy is allowable, and 'tis recorded by the Court *Quod non legit*; if the Offender should be reprieved till the next Assizes, the Book may be tender'd to him again, because 'tis *in favorem vite*, for which Reason he may have it under the Gallows. *Dyer 205. b.*

Dyer 214. b.

Anno 4. Eliz. one Stone committed two Felonies in the same Day, and Clergy was allowable for one, but not for the other: He was first indicted for that Felony for which he might have Clergy, and was found Guilty, but could not read, so the Court recorded *Quod non legit*, but he was reprieved till the next Assizes; then he was indicted for the other Felony, and found Guilty, but before Judgment prayed that the Book might be tender'd to him again for the first Offence, and had it, and could then read, and the Entry was contrary to what it was before, *viz. Quod legit ut Clericus*, but there was an Omission of these Words, *Quod crematur & tradatur Ordinario*, and the Question was, Whether he should have Judgment of Death upon the last Indictment? And held he should not, because if the Entry had been *Quod legit, &c. & tradatur Ordinario*, he ought not to be arraigned on the last Indictment, for by the former Conviction and Clergy allowed, and the Party reading, he is discharged from all Felonies done before that Time, and is afterwards the Prisoner of the Ordinary, and 'tis the Fault of the Officer for not making the Entry as he ought. If they had a Mind to hang the Man, he ought to be indicted for that Offence first for which he could not have Clergy.

But by a late Statute we are told, That the tendering the Book to read, is found by Experience to be of no Use; therefore the Offender is not required now to read, but he is to be punish'd as a Clerk convicted without Reading. *5 Anna.*

Conter.
ning the
Deltberp
of a Cri-
minal to
the Wdli-
nary.

The Common Law would not allow a Clerk, convicted by a Petty Jury, to be delivered to the Ordinary; but this was abridg'd by the Stat. of 25 Ed. 3. cap. 4. which enacts, That every Clerk convicted of Treason (not touching the King himself) or Felony, shall be delivered to the Ordinary; but though he was to be thus delivered, yet Purgation was not to be made if the Crime was notorious, for that would have

have been to contradict a Constitution then made by the Archbishop of *Canterbury*, which forbid the Allowance of Purgation to such Offenders.

My Lord *Hobart* was of Opinion, That this Constitution was made in Retribution for that Statute, and 'tis very probable it was so, because both were made in the same Year; and since that Act had enlarged the Jurisdiction of the Church beyond the Bounds of the Common Law, it seem'd a Compliment by the Archbishop to the Parliament, to prohibit Purgation to Clerks charged with grievous Offences.

Before the making of this Statute, *viz. Anno 3 Ed. 1.* the Ordinary would usually demand a Criminal, tho' not in Orders, and would discharge him without Purgation; but this was remedied by the Statute of *Westm. 1.* so that afterwards, if he had demanded any Person who was not a Clerk, the King might seize his Temporalties for a Contempt; but by that subsequent Act of *25 Ed. 3.* it was made an Offence only finable.

The Courts of Common Law would not then deliver a Clerk who stood as a Criminal before them, until an Inquisition was taken, that it might appear upon Record whether he was guilty or not; and this was a prudential Way to punish the Offender, in case he was guilty, for though the Ordinary might and usually did discharge him afterwards, yet he could not discharge the Forfeitures which were incurred and vested in the King by the finding of the Jury.

A Parson convicted of Manslaughter had his Clergy, and there was a Libel against him in the Spiritual Court, *Quod convictus fuit de Homicidio*, and this was alledged as a Cause to deprive him: He moved for a Prohibition, but it was denied, for the Allowance of Clergy did not disaffirm the Judgment; and the Proceeding in the Spiritual Court for a Deprivation, by reason of the Conviction, is in Affirmance of the Verdict. 'Tis true, the Statute *18 Eliz. cap. 7.* takes away Purgation; but before the Statute, Purgation did not take away but affirm the Verdict, for when the Person prayed his Clergy, and was delivered to the Ordinary, he was examined by twelve Spiritual Men, and if acquitted upon that Examination, he was not then to be deprived; but yet the first Conviction remained in Force, for the Examination by the twelve Clerks was only *de Credulitate*, and not upon Oath. *2 Cro. 431.*

Now tho' Purgation is taken away, yet it may not be improper to shew how the Law was formerly, as to that Matter.

Clergy.

- Purgation, was either
1. Canonical; this is taken away by the Statute of 28 Eliz. cap. 7.
 2. Vulgar, viz. by Combat, Fire or Water; now abolished.

Canonical Purgation, was when the Criminal made Oath, That he was clear of the Matter charged on him, and brought 12 of his Neighbours of good Credit, such as the Court should assign, to swear that they verily believed he had taken a true Oath; this my Lord *Hobart* calls a Counterfeit Verdict *de Credulitate*: These Men were to be as an Inquest, to enquire into the Life and Manners of the Accused.

Some were delivered *absque Purgatione*; this was after Conviction, and then the Ordinary could not admit them to Purgation, but they were to be *penaliter Custoditi* in his Prison with Bread and Small Beer, and could never be restored to Liberty without a Pardon.

For it was but reasonable, that since the Ordinary could not have the Criminal but by the Permission of the Queen; and the Law was, That he should not be admitted to Purgation after Conviction in her Courts, because that would be to controvert their Proceedings; and therefore they deliver'd him to the Ordinary after Conviction *absque Purgatione*, for without that restraining Clause a Criminal was often admitted to Purgation even after Conviction, but if that Clause was added, then it was a *Premunire* to admit him, &c.

At Common Law, the Punishment of a Person convicted of Felony was,

1. Forfeiture of Goods which he had at that Time.
2. Loss of Liberty.
3. Incapacity to purchase.

And thus the Criminal remained till he was admitted to the Benefit of Clergy, but then he was not restored to his Credit till Purgation.

In those Days an Offender might have his Clergy, even for Murder *toties quoties*; but this was restrained by the Statute of 4 H. 7. cap. 13. viz. That he should have it but once. And for the better Observance of that Law, it was then provided, That the Criminal should be marked upon the Brawn of the Left Thumb, that he might be known again upon a second Offence.

This was the first Statute which was made about burning in the Hand, which was not intended as any Part of the Judgment, for then it could have been pardoned upon an Appeal: It was only a Mark set upon the Offender, that he might not have his Clergy a second Time.

It was an usual Thing at that Time to deliver the Offender to the Ordinary after Burning, in order to make his Purgation, that he might be restored to his Credit; but now by the Statute of 18 *Eliz. cap. 7.* he is to be enlarged by the Court, &c.

So that it seems plain, since the making those Statutes, a Criminal, if not burnt in the Hand, is in the same Case as a Felon was at Common Law after Conviction, and before Purgation; that is, his Credit is lost, he is incapable of being a Witness, for the Law is not satisfied till he is either burnt, &c. or pardoned: 'Tis true, he may be bailed in order to get a Pardon, but till then the Conviction is still upon him.

But after Burning, the Judge may detain him, if he thinks fit, till he find Sureties for his Good Behaviour; or he may discharge him.

All Offenders whatsoever, except in Treason against the Person of the Queen, & *toties quoties*; but by the Statute of 25 *Ed. 3. cap. 4.* it was prohibited in Treasons; and by that of 4 *H. 7.* it is restrained to one Time, and no more.

So that now there are but very few Cases wherein the Common Law denies Clergy; but in many 'tis taken away by several Acts of Parliament.

'Tis a Rule in Law, That where a Statute creates a new Felony, the Offender shall have his Clergy, unless 'tis expressly taken away by that or any other subsequent Act.

Now the first Law which made a new Offence, and took away Clergy from the Offender, was the Statute of 7 *H. 7. cap. 1.* which made it Felony for a Soldier to depart from his Colours without Licence; and before that King's Reign, there was no Law to take away Clergy in Cases of simple Felony.

'Tis farther to be observed, that wherever Clergy is taken away by a particular Statute, the Offence laid in the Indictment must be brought within that very Statute, otherwise the Offender shall have Clergy.

As if he is indicted upon the Statute of 8 *Eliz. cap. 4.* for picking a Pocket *privily*, &c. the Words *clam & secreto* must be inserted.

Who shall have the Benefit of it at Common Law.

In what Cases 'tis taken away by Statutes.

| | | |
|---------|---|---|
| Armour. | { | Providing Ordnance, Munition or Victuals, Value 20 s. for War, 31 <i>Eliz. cap. 4.</i> Or Naval Stores, Value 20 s. &c. 22 <i>Car. 2. cap. 5.</i> |
| Bail. | | Acknowledging, or procuring to be acknowledged, any Fine, Recovery, Deed enrolled, Statute, Recognizance, Bail, Judgment, in the Name of another not consenting or privy. 21 <i>Jac. cap. 26.</i> |

Booth, &c. { In Fair or Market, any Body being in it. 5 &
6 Ed. 6. cap. 6.
Breaking { In Day time, and taking to the Value of 5 s.
House { 39 Eliz. cap. 15. Vid. Robbery.
Burglary — 23 H. 8. cap. 1.
Buggery — 5 Eliz. cap. 17.
Burning — Houses or Barns full of Corn.

For burning Houses, or Barns full of Corn, Clergy is taken away, by the Statute of 23 H. 8. cap. 1. and for several other Offences therein mentioned.

Savile 46.

Afterwards, by the Stat. 1 Ed. 6. cap. 12. Clergy is taken away for the same Offences which are mentioned in the Statute of 23 H. 8. But burning of *Dwelling-Houses* is omitted in this last Statute, which is, That in all other Cases of Felony, except those therein mention'd, Clergy shall be allowed; and because *burning, &c.* was not mentioned therein, it was the Opinion of Justice *Stamford*, That the Principal should have his Clergy, and *Anno 25 Eliz.* he had it accordingly.

Challenge of { Above twenty, or do not directly answer, 3 &
Jurors. { 4 W. & M. if the Indictment be for such an
Offence for which Clergy is not to be allowed, if convicted by Indictment or Confession.

Conjuration. { Convicted thereof, or of Witchcraft, &c. to
kill, consume or lame any Person, undertaking to tell where Goods lost or stolen may be found, to provoke any unlawful Love, or to destroy or hurt Cattle, or Goods or Person; first Offence, Imprisonment for a Year without Bail, only once in a Quarter of that Year must stand six Hours in the Pillory in some Market, &c. second Offence is Felony without Clergy. 1 Jac. 1. cap. 12.

Egyptians { Transported here, and staying above a Month.
1 & 2 Ph. & M. cap. 13.

Egyptians. { Any consorting with them above a Month,
and above 14 Years of Age. 5 Eliz. cap. 20.

Forgery — Second Conviction. 3 Eliz. 14.

Horse-stealing. { 1 Ed. 6. cap. 12. 3 Ed. cap. 33. These Statutes mention only the principal Horse-stealer, and therefore the Accessary shall have Clergy. *Dyer* 99.

Maiming — Person maliciously. 22 & 23 Car. 2.

Maid,

Maid, { Taken away, having Lands, &c. 3 H. 7. cap. 2.
Vid. Women.

23 H. 8. cap. 1. But then the Person must be found guilty; for if he was outlawed, he might have Clergy, notwithstanding the A&.

Murder. { This Defect was remedied by 25 H. 8. but still the Law was not compleat, because those Statutes did not extend to a Person confessing the Fact; and therefore it was remedied by 1 Ed. 6. cap. 12.

Northumberland. { Notorious Thieves and Spoilers taken there, or in Cumberland. 18 Car. 2. cap. 3. 29 Car. 2. cap. 2.

Pick-Pocket. { 8 Eliz. cap. 4. Taking above 12 d. from the Person *clam & secreto*, for otherwise Clergy is to be allowed. H. P. C. 231.

Poisoning — Of Malice prepensed. 1 Ed. 6. cap. 12.

Popish Refusants. { Those who are appointed to abjure, and refuse, or return again. 35 Eliz. cap. 1, & 2.

Priests, &c. { Those who receive them, being Natives of England, and ordained by the See of Rome. 27 Eliz. cap. 2.

Rape. — 18 Eliz. cap. 7.

Robbery in the Highway. { If found guilty upon Indictment. 23 H. 8. c. 1.
If mute, or challenge above 20. 25 H. 8. c. 3.
If attainted. 1 Ed. 6. cap. 12.

It must be alledged to be done in * *alta via Regis*, for if 'tis a *Foot-way*, he shall have his Clergy; but in *via Regis* without *alta*, he shall not have Clergy. Moor 5. Hes. 75. # For so is the Statute.

Robbery in a Dwelling-house. { Taking Goods by Day or by Night, the Owner or other Person being there, and put in Fear; or shall rob any Dwelling-House in the Day-time, any Person being therein; or break a Dwelling-house, Shop or Warehouse thereunto belonging, in the Day-time, and taking Goods to the Value of 5 s. tho' no Person be therein; the principal Offenders and the Accessaries, and those who counsel, hire, or command any Person to commit Burglary. 3 & 4 Will. & Mar. being indicted and standing mute, or challenge above Twenty Jurors.

Soldier. { Departing without Licence. 2 E. 6. cap. 2.

{ Wandring without a Testimonial from a Justice. 39 Eliz. cap. 17.

Stabbing.

| | | |
|------------------------------------|---|--|
| Stabbing. | { | Person not having a Weapon drawn, or not striking first, and Death ensuing within six Months. 21 Jac. cap. 6. |
| Woollen-Cloth. | { | Cloth cut and taken, stole or carried away, from Tenters in the Night-time. 22 Car. 2. s. 5. |
| Woman, | { | Stolen, having Lands or Goods, or being Heir-apparent, he that marries, defiles, or receives her knowingly. 3 H. 7. cap. 2. |
| Accessaries. | { | Clergy taken from Accessaries by Statute. 'Tis a Rule in Law, Where a Statute takes away Clergy from the Principal, 'tis not by that Means taken away from the Accessary, unless particularly named. |
| In Burglary. | { | Accessaries before and after the Fact. 3 & 4 W. & M. |
| In Burning Houses or Barns. | { | Accessaries in all Cases. 4 & 5 Ph. & M. cap. 4. |
| Buying and receiving stolen Goods. | { | Knowing them to be stolen, are Accessaries to the Felony after the Fact. 3 & 4 W. & M. cap. 9. |
| Murder. | { | Accessaries before the Fact. 4 & 5 Ph. & M. cap. 4. |

1 And. 195.

The Words of this Statute are, viz. If a Man command, counsel, or hire another to commit wilful Murder, he shall not have the Benefit of Clergy. One Mr. Grevill was indicted, for that *malitiose* extrahit, movit & procurabat the Principal to commit Murder. Now tho' those Words differ from these in the Statute, yet the Indictment is good; for to *move* and *procure* a Thing to be done, amounts to *counselling*, and is the same in common Sense and Understanding.

Pick-Pocket. { Accessaries, viz. to those who rob any Person. 3 & 4 W. & M.

Rape. — Accessaries. { Accessaries in all Cases. 4 & 5 Ph. & M. cap. 4.

The Words of the Statute Ph. & M. are, viz. If a Man shall *Malitiously* command, &c. another to commit a Robbery, the Indictment was against a Person for *procuring* and *counselling* the Principal to do it, leaving out the Word *malitiose*. Now tho' that Word might be properly applicable to other Offences mentioned in that Act, as Treason, Murder, &c. yet in Robberies it may not be so, because in that Crime

H.P.C. 231. Robbery in the Highway, or Dwelling-House. Dyer 183.

Crime there is seldom any Malice, but rather a covetous Desire of getting; but it being a material Word, and particularly mentioned in the Statute, the Indictment is not good without it.

Accessaries to robbing Dwelling-house, Shop or Warehouse, and taking in Money or Goods to the Value of 5*l.* 3*o* 4*d.* *W. & M.*

Convicted of an Offence for which a Man may have Clergy, shall upon her Prayer suffer the same Punishment the Man should, and may be kept in Prison, not exceeding a Year; but upon her second Conviction shall suffer Death. 4*o* 5*d.* *W. & M.*

Woman.

Clerk of the Crown, of the Peace, or of the Assizes, certifying by Transcript the Indictment, or the Tenor thereof, to the Judges or Justices in any other County, that the Person had the Benefit of the Clergy, that shall be a sufficient Proof thereof.

Clerk of the Peace.

HE is an Officer at the Common Law, for he is Clerk to the Conservators of Justices of the Peace; and 'tis very probable he was first instituted by them to make Entries, and to record their Proceedings.

His Beginning, and by whom appointed.

In former Times, the *Custos Rotulorum* had the keeping of those Records; but afterwards when that became an Office of Honour and Dignity, then he appointed a Clerk of the Peace.

Thus it stood till 37 *H. 8.* and then a Law was made, reciting, That the Chancellor had taken upon him an Authority to make a *Custos* for Life, and he to appoint a Clerk of the Peace for Life, which was a Grievance; and therefore from thenceforth the *Custos* was to be appointed by the King during Pleasure, and the Clerk of the Peace was to continue in his Office no longer than the *Custos*.

Afterwards by 4 *Ed. 6.* this Statute, as to the appointing of a *Custos*, was repealed, and the Chancellor had Power again to appoint a *Custos*; but the Office of the Clerk of the Peace remained as before.

And thus it continued till 1 *W. & M.* and then the Appointment of a *Custos* was enacted to be as by the Statute of

37 *H.*

Clerk of the Peace.

37 H. 8. and he is to appoint a Clerk of the Peace to enjoy the Office so long only as he shall behave himself well.

This was introductive of a new Law, for before he was removeable with the *Custos*, but now he hath an Estate for Life, determinable upon his Misbehaviour.

So that by this Act, the Power of the *Custos* is abridged; for before he might appoint any Person at large, but now the Person appointed must be resident in the County. Formerly the *Custos* might remove the Clerk, &c. and the Sessions could not, for they had only Power to suspend him for any Misbehaviour; but now the Justices may remove him upon a Complaint exhibited in Writing, and due Proof thereof, and the *Custos* cannot; and if he appoint not another before the next Sessions, the Justices may do it.

His Du-
ty.

He is to be present at the Sessions, and to draw up the Process of the Court; he is to read Indictments, and to record the Proceedings of the Justices.

He must record the Rates of the Servants Wages, and inrol the Discharge of Apprentices. 5 Eliz. cap. 4.

He is to certifie into B. R. the Transcripts of Indictments, Outlawries and Convictions before the Justices within Forty Days next after the Conviction, &c. or within Twenty Days after the Beginning of the Term next ensuing, or forfeits 40 s. to the Queen and Prosecutor. 34 & 35 H. 8. c. 14.

He must record the Presentments for not coming to Church, and the Certificate for not taking the Oath of Allegiance. 3 Jac. cap. 4.

Inrolling. { A Bargain and Sale of Lands not exceeding 40 s. per Ann. rs. And if it doth exceed that Value, then 2 s. 6 d. 27 H. 8. cap. 16.

His fees
by the
Statute.

Licence and
Recogni-
zance.

{ For a { Badger,
Drover,
Lader,
Kidder, } 2 s. If he take more, he is
finable.

In an Indictment for Murder, the Fact was laid to be committed 31 Junii, and the Deputy, in the Presence and Hearing of the Clerk of the Assize, did read the Indictment as it was: The Offender was tried, and then the Clerk of the Assize informed the Court of the Mistake in the Indictment, (viz.) That there were not 31 Days in June; but because he did not inform them before the Trial, he was fined 40 l. and committed. Moor 555.

He

Clerk of the Peace.

137

He must take nothing of any Witness who shall give Evidence against a Felon, nor take more than Two Shillings for drawing any Bill of Indictment against a Felon; the Forfeiture is 5*l.* with full Costs. 10 & 11 Will.

And if he draws a defective Bill, he shall draw a new one without any Fee, under the Penalty of the like Forfeiture, to be recovered by him who shall sue for the same in any Court of Record.

Clipping, Counterfeiting, and Coining of Money.

Clipping was not Counterfeiting within the Meaning of the Statute of 25 Ed. 3. cap. 2. but it was declared to be High Treason by a subsequent Statute, viz. 3 H. 5. cap. 6. and so the Law stood till 1 Mar. and then that Act was repealed; but afterwards, by 5 Eliz. cap. 11. Clipping, Washing, Rounding or Filing the proper Money of this Realm (for Lucre-sake) or of Foreign Money made current here, was made High Treason. 2 Jones 233.

Afterwards by the 18 Eliz. cap. 1. impairing, falsifying, or making light our Coin or Foreign Money made current here (for Lucre-sake) was made Treason. These are Crimes of the same Nature with Clipping, but they differ in the Punishment; for these latter Offences work no Corruption of Blood.

But now a new Law is made to prevent the Clipping, Diminishing or Impairing the Coin of this Realm. 6 & 7 Will.

That the Buyer or Seller of Clippings or Filings, or any Person who shall knowingly have them in his Possession, shall not only forfeit the same, but likewise 100*l.* one Moiety to the Queen, and the other to the Informer, and shall also be burnt in the Right Cheek with the Letter R. and be committed till he pay the Fine.

And in order to discover such Persons, 'tis by the same Statute enacted, That Two Justices in any County, and one or more * Wardens of the Company of Goldsmiths, with two or more of their Assistants, if within the Weekly Bills, &c. may enter the House of any suspected Person; and if resisted, may with the Assistance of a Constable break it open, and seize the Bullion and the Person, and examine him or her upon Oath, viz. Whether it was lawful Silver, and whether the same was not the current Coin of this Realm, or the Clipping thereof before it was melted; and if 'tis not proved by Oath, as aforesaid, or by the Oath of a credible Witness, that 'tis lawful Silver, and that the same was not Clippings before it was melted,

* They are to carry the Person before next Justice, who is to examine him upon Oath, &c.

Clipping and Coining, &c.

melted, then the Two Justices may commit the Person, and secure the Bullion, and compel the Witnesses to enter into a Recognizance to prosecute; and if the Person upon his Trial on an Indictment for melting the current Coin, &c. shall not prove by the Oath of one Witness, that it was lawful Silver, and that it was not the current Coin, &c. nor Clippings thereof before it was melted, he must be found guilty, and be committed without Bail for Six Months.

He that apprehends and prosecutes such Offender to Conviction, shall receive of the Sheriff 40*l.* within a Month after Conviction, producing the Judge's Certificate.

Castings Ingots of Silver, or stamping any Marks to imitate Spanish Bars, Penalty 500*l.* and Forfeiture of the Silver so cast.

Cap. 25.

By another Statute made 8 & 9 *Will.* they who make Puncheons or Dies knowingly, or mending, beginning or proceeding to make them, or assisting therein, or any Edging-Tool, or Coining-Press, or Cutting-Engine, or having in their Possession any such Puncheon without any lawful Authority, shall be guilty of High Treason.

So likewise any Person conveying out of the Mint any Puncheon, Die, &c. and Persons knowingly concealing the same, shall be guilty of High Treason.

The like Penalty on Persons making the Edges of any counterfeit Coin, and likewise on those who colour or gild any Coin in Resemblance of the current Coin, or round Blanks of base Metal, or gilding Silver Blanks fit to be coined.

And if any Puncheon or Die is found in the Possession of any Person not employed in the Mint, it may be seized, and produced in Evidence against such Person, and then it shall be broke into Pieces; and so shall any counterfeit Money produced in Evidence: And this must be done in open Court, or in the Presence of some Justice of the Peace, and then delivered to whom of Right it doth belong.

Persons blanching Copper for Sale, or mixing blanch'd Copper with Silver, or buying or selling, or offering to Sale, any malleable Mixture of Metals, which shall be heavier than Silver, and look, and touch, and wear like Gold; or he who shall take, pay, or put off counterfeited mill'd Money, or any mill'd Money unlawfully diminished, and not cut in Pieces, for less than its Denomination doth import, every such Person shall be guilty of Felony.

This Act was at first but Temporary, but being found by Experience to be very useful, therefore it was by the Statute of 7 *Anna* made Perpetual.

And whereas the Prosecution upon that Act was to be within Three Months after the Offence, that Time was enlarged by this subsequent Statute, as to any Prosecution for making

making or mending, or beginning or proceeding to make or mend, any Coining-Tool or Instrument therein prohibited, or by making Money round the Edges with Letters; for in all those Cases, the Prosecution may be at any Time within Six Months after the Offence committed.

By an Act 9 & 10 Will. it was made lawful for any Person to cut or break in Pieces any Silver Money tendred in Payment which shall be diminished, or which by the Impression, Colour or Weight, shall be suspected to be counterfeit, and the Person tendring the same shall be at the Loss; but if 'tis full Weight and good Money, then the Person breaking it shall receive it at that Rate for which it was coined.

Any Dispute arising, Whether the Piece cut is counterfeited? If in a City or Town Corporate, shall be determined by the Chief Magistrate; if in the County, then by the next Justice of Peace, who may administer an Oath, if they shall see it convenient.

The Tellers and Clerks of the Exchequer, and the general Receivers of every Branch of the Revenue and Taxes, must cut every counterfeit Piece that shall be tendred in Payment; and the better to discover the same, shall weigh in whole Sums or otherwise all Silver Money by them received.

This was Treason by the Common Law; and 'tis held, Counterfeiting. That washing, filing, diminishing or scaling, &c. for Lucre's sake, is counterfeiting within the Meaning of the Statute of 5 Eliz. and the Counsellors, Consenters and Aiders within the Statute of 18 Eliz.

Forging our Coin without uttering it, is Treason; and forging Foreign Coin made current, is Misprision of Treason.

Importing, or bringing counterfeit Foreign Coin knowingly, is Treason, by the Statute of 25 Ed. 3. But then it must be brought from a Foreign Nation, not under the Dominions of England, and it must be in the Likeness of our Money, and the Importer must know it to be counterfeit, and must make some Payment thereof.

One Witness is sufficient to convict the Offender.

H.P.C.262.

Uttering false Money, knowing it to be so, is not High Treason, but a great Misdemeanor, and finable.

But if he who utters it doth know who coined it, or if he supplied the Coiner with Coining-Tools, or with Silver, and Money is coined accordingly; in either of these Cases, he who utters it is guilty of High Treason, because he is aiding and assisting to the Coining. Keeling 33.

And here it may not be improper to mention the Value of Foreign Coins which pass in our Plantations Abroad, the

Clipping and Coining, &c.

the Currency whereof were settled by the Queen's Proclamation in June 1704. and the true Value of them, according to their Weight and Assays, are as follow :

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|---|-----------|-----------|-----------|
| 6 Annz. <i>Sevil</i> Pieces of Eight old Plate, ————— | 0 | 4 | 6 |
| <i>Sevil</i> Pieces of Eight new Plate, ————— | 0 | 3 | 7 |
| <i>Mexico</i> Pieces of Eight 17 Penny-Weight, ————— | 0 | 4 | 6 |
| Pillar Pieces of Eight 17 Penny-Weight, ————— | 0 | 4 | 6 |
| <i>Pern</i> Pieces of Eight old Plate, 17 Penny-Weight, ——— | 0 | 4 | 5 |
| Cross Dollars 18 Penny-Weight, ————— | 0 | 4 | 4 |
| Ducatoons of <i>Flanders</i> 20 Penny-Weight, ————— | 0 | 5 | 6 |
| <i>French</i> Crowns 17 Penny-Weight, ————— | 0 | 4 | 6 |
| <i>Crusado's</i> of <i>Portugal</i> 11 Penny-Weight, ————— | 0 | 2 | 10 |
| Three Gilder Pieces of <i>Holland</i> , ————— | 0 | 5 | 2 |
| Old Rix Dollars 18 Penny-Weight, ————— | 0 | 4 | 6 |

The Halfs, Quarters, and others in Proportion, but none of *Sevil*, *Mexico* or Pillar Pieces of Eight, tho' of full 17 Penny-Weight and an half, shall pass for more than Six Shillings a Piece; and the *Pern* Pieces of Eight, and Dollars and other Foreign Coins, shall be regulated according to their Weight and Finess, in Proportion to the Pieces of Eight of *Sevil*.

A Warrant to commit a suspected Person, who could not prove that the Bullion was lawful Silver.

To the Constable of, &c. and to the Keeper of the Common Gaol for the said County at H.

6 & 7 Will.
Two Justices;
Imprisonment
for Six
Months.

Suffex ff. **V** Hereas a certain Quantity of Bullion hath been lately found and seized in the Possession of T. P. of, &c. which said Bullion, before the melting thereof, is suspected to be unlawful Silver: And whereas upon the Examination of the said T. P. taken before us this present Day upon Oath, he hath not made sufficient Proof, that the said Bullion, before the melting thereof, was not current Coin, or Clippings of such Coin, according to the Form of the Statute in that Case made and provided: These are therefore to command you to convey the said T. P. to the common Gaol at H. aforesaid, and to deliver him there to the Keeper thereof, together with this Precept, commanding also you the aforesaid Keeper to receive the said T. P. into your Custody and Gaol aforesaid, and him there safely to keep until he shall be from thence delivered by due Course of Law: And hereof fail not. Given, &c.

An

An Indictment for Coining and Uttering of Money.

Suffex ff. **JUR.** &c. quod T. P. de, &c. Deum pro oculis suis non habens, sed instigatione Diabolica seductus 26 die Octobris, Anno, &c. apud paroch' de, &c. in Com' prad' viginti pecias de cupro & ere & aliis mixtis Metallis ad instar. & similitudinem bonae & legalis & currentis monetae Regni Angliae vocat. solid. (Anglice, Shillings) falso & proditorie fabricavit eadid. & contrafecit ac sciens prad' viginti pecias sic ut praefertur falso & proditorie fore fabricat. eussat. & contrafecit. idem T. P. quinq; pecias inde postea scil. prad' 26 die Octobris, Anno, &c. apud, &c. in Com. prad. & alibi diversis dicta Dom' Regiae subditis pro vera legitima & currente moneta Angliae deceptivus falso & proditorie exposuit solvit & utteravit in magnum praedudicium fraudem & deceptionem dicta Dom. Reg. subditorum ac contra pacem Dom. Reg. coron. & dignitates suas necnon contra formam Statut. in hujusmodi casu edit. & provis.

An Indictment for Counterfeiting, and against another for Relieving after the Offence.

Suffex ff. **JUR.** &c. quod T. P. de, &c. Deum pro oculis, &c. 26 die Octobris, Anno, &c. quod draganta pecias de stanno & aliis mixtis Metallis ad instar. & ad similitudinem bonae & legalis monetae Angli. vocat. solid. (Anglice, Shillings) falso & proditorie fabricavit eadid. & contrafecit apud L. in Com. prad' postea; scil. dicta 26 die Octobris, Anno, &c. supradictis eisdem pecias sic ut praefertur falso & proditorie fabricat. & contrafecit diversis dicta Dom. Reg. subditis pro vera & legitima hujus Regni Angliae moneta apud L. prad. in Com. prad. deceptivus falso & proditorie exposuit & utteravit in magnum, &c.

Et quod J. O. de, &c. Sciens praefat. T. P. prodicionem prad. modo & formam prad. facisse & perpetrasse eundem T. P. postea, scil. secundo die Januarii, Anno supradicti apud L. prad. in Com. prad. recepit & confortavit ac prodicionem prad. concealavit contra pacem dicta Dom. Reg. nunc coron. & dignitatem suam.

The Judgment for this Offence, and for Clipping, is, to be drawn, &c. and hang'd, but not quartered; tho' my Lord Coke says, That the Judgment for Clipping is the same as in High Treason. 3 Inst. 17. Levinton 2. P. 98. 1 Vent. 254.

M. Cloth.

An Act for the better regulating and ordering

Cloth?

Under this Title, Three Things may be considered:

1. Such Things which relate to Justices.
2. Which relate to Overseers of Cloth.
3. Offences against the Statutes concerning Cloth, and the Penalties.

First, One Justice in the County, and the chief Officer in a Corporation, per 3 & 4 Ed. 6. cap. 8. and afterwards by 39 Eliz. cap. 20. two Justices in the County, and the chief Officer in Corporations, may appoint and swear Overseers or Searchers for faulty Cloth.

Justices may search after and seize Ropes, Winches and Engines, used for stretching Northern Cloths, and he who opposes, forfeits 10 l. 39 Eliz. cap. 20.

Two Justices may call before them any suspected Persons, and if by Confession of the Party, or Oath of two Witnesses it appears he is guilty, they must certify it under their Hands and Seals to the Officers of the Parish where the Offence was committed. 21 Jac. cap. 18.

Justices neglecting to appoint Overseers, as enjoined by 39 Eliz. or not searching for Ropes, Winches, &c. forfeit 5 l.

Two Justices in County, and chief Officer, if in Corporation with another joined with him, may inflict Whipping upon a Sorter, Carder, Kember, Spinner or Weaver of Wool, found guilty by Confession, or Oath of one Witness, of imbezelling or detaining Wool from the true Owner; and the Receiver is to incur the like Punishment. 7 Jac. 7.

Overseer, when chosen, if he refuse to execute his Office, loseth 40 s. to the Queen, and to the Justices by whom appointed, and to be committed till paid. 3 & 4 Ed. 6. cap. 2. and by 39 Eliz. 20. forfeits 5 l. ut prius.

Must search once in every Quarter of a Year, or forfeits 10 l. between Queen and Prosecutor. *Ibid.*

If interrupted in his Office, the Offender loseth 20 s. between Queen and Overseer. *Ibid.*

No Advantage of Forfeits, unless Prosecution be within a Year after it accrews. *Ibid.*

Overseers must search once a Month for Defects in the Northern Cloths, 39 Eliz. cap. 20.

Durp of
Overseers
and other
Officers.

May present at next Sessions any Cloth stretched, or sealed with false Seals. *Ibid.*

Overseer must fix a Leadén Seal to each Cloth, containing the Length and Breadth thereof, with the Word [Searched] thereon; and this is an Exemption from any farther Search.

If any besides Overseers set or take away any Seal without Warrant, the first Offence is 10 s. convicted a second Time by two Witnesses or by Verdict, forfeits 20 s. to be divided between Queen, Informer and Poor, and the Offender to stand in the Pillory. *Ibid.*

Searchers may enter into any House or other Place to find deceitful Cloth. 21 Jac. cap. 18.

Officer being sued, may plead the general Issue, and shall recover double Cost. *Ibid.*

Searchers in a Parish, where defective Cloth is made, must certify it by the Word [Faulty] stamped on the Seal. *Ibid.*

He who searches Cloth already searched, forfeits 5 s. to the Party grieved. *Ibid.*

Searcher must set his Name upon the Seal of the Cloth. *Ibid.*

Justices having certified under their Hands and Seals, that any Person hath used Flocks, Thrum, Hair, or other deceitful Stuff, in making Broad-Cloth, the Church-Wardens and Overseers of the Poor of the Parish where the Offence is committed, may levy 5 s. upon the Goods of the Offender by Distress and Sale, &c. and distribute it to the Poor of that Parish.

By * 2 & 3 Ph. & Mar. cap. 11. Cloth-worker not living in a City, Borough, or Town-Corporate, must not keep more than one Loom; Forfeiture is 40 s. per Month.

1. Whether Clothier hath set a Leadén Seal to his Cloth, declaring the just Length; if not, he may be fined 3 s. 4 d. Ed. 6. cap. 2.

If Cloth is stretched above a Yard and half in length, and Quarter in Breadth, the Offender forfeits 20 s.

Streets and Kerseys stretched above a Yard in length, and half a Quarter in breadth: Forfeiture is 20 s.

Browns, Blues, Tawnies and Violets, must be well boiled, grieved and maddered upon the Woad, and well shot with Cork and Orchel before dyed: Penalty 30 s.

Wool for Russets, Marbles, Grayes, Bayes, or Wool for Hats or Caps, must be woaded, maddered and boiled before dyed: Penalty 40 s.

Dying with Brazile to make a false Colour: Penalty 20 s. Flocks, Chalk, Flower, Starch, or any deceitful Thing put in Cloth, except Devonshire or Cornwall Straits: Forfeiture is 40 s.

* Indictment will not lie at Sessions on this Act. 4 Mod. 379. † Offences against the several Acts, and the Penalties.

Iron-Cards, or Picards, used in rolling Wool, are forfeited, and 20 s. besides, all the Forfeitures to be divided between the Queen and the Overseer, and to be recovered in any Court of Record: Sold by any other Measure than Yard and Inch, Penalty for every Yard 6 s. 8 d.

Denying or withholding Faulty Cloth, forfeits 10 l. for first Offence, 20 l. for second, to be divided between Queen, Informer and Poor; and being convicted of the third Offence, must stand in the Pillory. 39 Eliz. cap. 20.

Justices may determine the Offences of denying or withholding, &c. in their Sessions, and Justices of Assize may convict the negligent Justice, upon Proof by two Witnesses, and in Default thereof, the Penalties of 10 l. and 20 l. may be recovered in any other Court, and then the one Moiety goes to the Queen, and the other to the Informer. *Ibid.*

Kentish Cloth above the Price of 6 l. must be between 28 and 30 Yards in length, being wet, and 7 Quarters broad within the Lists, and must weigh 76 Pounds after 'tis dressed: The Forfeiture is 20 s. for want of Length or Breadth.

Per 4 Jac. cap. 2. The Forfeiture, if it exceeds in Length, for every Yard and Inch so exceeding, is 10 s.

If it wants Weight, the Forfeiture for every two Pounds wanting is 10 s.

If it want Breadth, the Seller for one whole Piece forfeits 20 s. for half a Piece 10 s. and so proportionably, to be divided between Queen and Overseers, &c.

* 4 Jac. 1. cap. 2. must be between 30 and 34 Yards wet, and Six Quarters and half within the Lists, and weigh 86 Pounds.

Coals.

6 & 7 Will. cap. 10.

Keels and Boats at Newcastle, carrying Coals, shall be marked by Commissioners, &c. and if the Mark shall be removed or altered, then on Proof of one Witness on Oath before one Justice, the Offender forfeits 40 l. one Moiety to the Queen, the other to the Discoverer; to be levied by Distress, by Warrant of one Justice, and if that is not to be had, then to be committed for three Months without Bail.

The Warrant to levy the Forfeiture to the Constable, &c.

* Or altering or being privy to it (as the Case is).

Northumberland ss. Whereas W B. of, &c. hath been duly convicted before me, for removing the Marks and Nails of the Keel (or Cart) of, &c. after the same was marked and nailed, and that the Mark was so removed,

removed, in order to frustrate the Intent of the Statute in that Case made and provided; for which Offence the said W. B. hath forfeited 10*l*. These are therefore to require you forthwith to levy the said 10*l*. by Distress and Sale of the Goods of the said W. B. rendering to him the Overplus, if any such shall happen to be: And hereof fail not. Given under my Hand and Seals, &c.

Common-Prayer.

IN Anno 2 Ed. 6. the Reformers intending to bring the Worship of God under set Forms, compiled a Book of Common-Prayer, which was establish'd by Act of Parliament in that Year.

But because several Things were contained in that Book, which shewed a Compliancy to the superstitious Humours of those Times, and some Exceptions being made to it by precise Men at Home, and by John Calvin Abroad; therefore two Years afterwards it was reviewed, in which Mr. *Starkey* was consulted, and some Alterations were made, which consisted in adding some Things, and leaving out others, as in the former Edition.

A general Confession of Sins to the Daily Service.

A general Absolution to the truly Penitent.

The Additions were,

The Communion to begin with reading the Commandments, the People kneeling.

And a Rubrick concerning the Posture of Kneeling; which was afterwards ordered to be left out, by the Statute of the 1 Eliz. but is now again explained, as in 2 Ed. 6.

The Use of Oil in Confirmation and Extream Unction. Prayers for Souls departed.

Left out.

And what tended to a Belief of the Corporal Presence in the Consecration of the Eucharist.

Afterwards, Anno 5 Ed. 6. a Bill was brought into the House of Lords to enjoin Conformity to this new Book, with these Alterations; by which all People were to come to those Common-Prayers, under Pain of Church-Censures; which Bill passed into a Law, Anno 5 & 6 Ed. 6. but not being observed

Common Prayer.

Second during the Reign of Queen Mary, it was again reviewed by a Committee of Learned Men, (viz.) Mr. Whitehead, Chaplain to Queen Elizabeth's Mother; Dr. Parker, afterwards Archbishop of Canterbury; Dr. Grindall, afterwards Bishop of London; Dr. Cox, afterwards Bishop of Ely; Dr. Pilkington, afterwards Bishop of Durham; Dr. May, Dean of St. Paul's, who was one of the former Committee; Dr. Bill, Provost of Eaton; and Sir Thomas Smith; and appointed to be used by every Minister, Anno 1 Eliz. with some Additions which were then made: viz.

Certain Lessons for every Sunday in the Year; some Alterations in the Liturgy; Two Sentences added in the Delivery of the Sacrament, intimating to the Communicants, that Christ is not Corporeally present in the Elements, &c. The Form of making Bishops, Priests and Deacons, was likewise added. Some Alterations were made in the Rubrick in King James's Reign: And as for the Additions of Thanksgivings at the End of the Mass, the Prayer for the Queen and Royal Family, which were not in the first Book, those were done by the Authority of that King's Commission, and are still in Force by vertue of his Proclamation, and so are the Prayers of the Inauguration of our Kings and Queens, and against the Gun-Powder Treason.

Upon these and other Statutes, several Things are to be considered:

1. The Punishment of a Minister for refusing to use, or depraving the Book of Common Prayer.

2. The Punishment of any other Person depraving it, and of such who shall hear, or be present at, any other Form.

3. Who are bound to use it, and assent to it.

4. Who must provide it.

If he is convicted by Verdict, Confession or notorious Evidence of the Fact of refusing to use it, or using any other Form, or depraving it:

The Punishment of a Minister, Vide Paper in Jail.

Afterwards, Anno 2 Ed. 6. a Bill was brought into the House of Lords to impose Conformity to this new Book, with some Alterations; by which all People were to come to those Common Prayers, under Pain of Church-Censure; which was passed into a Law, Anno 2 Ed. 6. but not being observed.

For the first Offence, by 2 & 3 Ed. 6. he forfeits to the Queen which of his Benefices the Queen will chuse: But *per Stat. 1 Eliz. 2.* loses his Spiritual Livings for a Year, and by both, Imprisonment for 6 Months, by the first Statute without Bail, and by the other indefinitely.

If Beneficed, Second Offence, Deprivation and Imprisonment for a Year, by both Statutes.

Third Offence, Imprisonment for Life by the Statute of Ed. 6. and Deprivation and Imprisonment for Life by the Statute of Eliz.

First Offence, Imprisonment for 6 Months, but by the Statute of 1 Eliz. cap. 2. Imprisonment for 12 Months.

Second Offence, Imprisonment for Life.

If any Person shall be convicted (as aforesaid) by Songs or otherwise, to have depraved it, or to procure a Minister to say any other Form, or have interrupted him to say the Service.

Punishment of any other Person depraving or being present at any other form.

First Offence, *per Stat. 2 & 3 Ed. 6.* forfeits 10 l. to the Queen, and if not paid within 6 Weeks after Conviction, then Imprisonment for three Months instead thereof; but by the Statute of 1 Eliz. forfeits 100 Marks to the Queen, and if not paid (*ut supra*) shall instead thereof be imprisoned for a Year.

Second Offence, *per Stat. Ed. 6.* forfeits 20 l. to the Queen, and if not paid (*ut supra*) Imprisonment for 6 Months without Bail: But *per Stat. 1 Eliz.* forfeits 400 Marks to the Queen, and if not paid (*ut supra*) Imprisonment for a Year.

Third Offence, forfeits all his Goods and Chattels, and Imprisonment during Life.

Any Person convicted at the Assizes, or Sessions to have wittingly heard, or to have been present at, any other Form of Common-Prayer than what is expressed in the Statute of 1 & 3 Ed. 6.

First Offence, Imprisonment for 6 Months without Bail.

Second Offence, Imprisonment for 12 Months.

Third Offence, Imprisonment for Life. 5 & 6 Ed. 6.

Justices of Oyer and Terminer, of Assize, and Mayors and Head-Officers of Corporations, have Power to hear and determine Offences against the Statute of 2 & 3 Ed. 6. the Prosecution must be at the next Assizes after the Offence committed, but *per Stat. 23 Eliz. cap. 1.* Justices in Sessions have the like Power. Prosecution must be within a Year and a Day after the Offence.

Who are bound to use it, and to assent to it.

No Form of Prayer shall be used in any publick Place, other than according to the said Book.

Incumbent on a Benefice with Cure, residing on his Living (tho' he keeps a Curate) and not having a lawful Impediment to be allowed by the Ordinary, must himself once in a Month read it, as by the said Book is appointed, or for every Offence forfeits *5 l.* to the Use of the Poor. Conviction must be before two Justices, by his own Confession, or Oath of two Witnesses. *13 & 14 Car. 2. cap. 4.*

If the *5 l.* is not paid within 10 Days after Conviction, then the Church-wardens and Overseers of the Poor may, by a Warrant from two Justices, levy it by Distress and Sale of Goods. *Idem.*

No Person shall be a Lecturer, Preacher or Reader, with a Licence from the Ordinary, but must read the 39 Articles, and declare his Assent thereunto, and must read the Service the first Time he preaches, and declare his Assent to it; and upon the first Lecture-Day of every Month, must read the Service, and declare his Assent, as *per Stat. 13 & 14 Car. 2.* and if he refuse, is disabled to preach till he conform: But at Sermons and Lectures in Cathedrals and Colleges, 'tis sufficient if a Lecturer declare his Assent to all Things in the said Book.

If any Person shall preach, being disabled, *ut supra*, before he conforms, two Justices, upon Certificate from the Ordinary, may commit him for 3 Months.

God. 118.

A Man was convicted for administering the Sacrament of Baptism in another Form than prescribed by the Book of Common-Prayer. He was indicted the second Time for the like Offence, and had Judgment to suffer Imprisonment for a Year, and to be deprived *ipso facto* of all his Spiritual Promotions; and upon a Writ of Error brought, this Judgment was reversed, because the first Conviction was not set forth in the second Indictment, for otherwise the second Conviction doth not warrant such a Judgment.

An Indictment upon the Statute of 5 & 6 Ed. 6.
for hearing and being present at another Form
of Prayer.

JUR. &c. quod F. C. nuper de L. in Com. S. Gen. primo die Junii,
Anno Regni Domini nostri Gulielmi Tertii Dei Gratia Anglia, &c.
Regis decimo tertio apud L. prad. in Com. prad. voluntarie audiuit
& presens fuit ad aliam formam Communis precatonis quam decla-
rat. & mentionat. existit in quodam Libro intitulo, Liber Communis
precatonis & administration. Sacrament. & aliorum rituum & cere-
moniarum Ecclesie Anglicane auctoritate. per aliam Parliament.
sent. Anno quinto & sexto Regni Domini Edwardi nuper Regis An-
glie sexti contra formam statuti. ac contra pacem.

Judgment
First Of-
fence six
Months
Imprison-
ment with-
out Bail.

A Warrant against an Incumbent, for not reading
the Service once a Month.

To the Church-wardens and Overseers of the Poor of the Parish
of H. in the said County.

Suffex ss. **W**HEREAS J. S. Incumbent on the Benefice of H.
with Cure in the said County, and residing
on his said Living, and having no lawful Impediment al-
lowed by his Ordinary, hath on the 3d Day of this Instant
June, been lawfully convicted before us, R. B. and W. N. two
of Her Majesty's Justices of the Peace for the said County,
for that he the said J. S. did not in a Month last past pub-
lickly read the Common-Prayers in the said Parish Church
of H. aforesaid; in such Manner and Form as in and by the
Book entituled, *A Book of Common-Prayer, &c.* is appointed,
and according as 'tis enjoin'd by the Statute in that Case made
and provided; by reason whereof, and by vertue of the said
Statute, he the said J. S. hath forfeited 5 l. to the Use of
the Poor of the said Parish. These are therefore to require
you, or some of you, to ask and demand the said 5 l. of the
aforesaid J. S. and that if the same shall not be paid to you,
or some of you, within 10 Days after such Demand and
Conviction as aforesaid, then to levy the same by Distress
and Sale of the Goods of the said J. S. rendering to him the
Overplus. And hereof fail not. Given under our Hands
and Seals, &c.

13 & 14
Car. 2.
cap. 2.

Com-

Commitment of a Lecturer, &c. for Preaching,
being disabled, &c. by the Statute of 13 & 14
Car. 2. cap. 4.

To the Constable of the Hundred of L. in the County of S. and to
the Keeper of Her Majesty's Gaol in the said County.

Suffice ff. **W** Hereas upon a Certificate from the Ordinary of the Diocese of C. directed to us, R. B. and W. N. Two of Her Majesty's Justices, &c. it doth appear that J. S. therein named, being Lecturer of the Church of H. in the said County, hath preached there without a Licence by him had or obtained from his said Ordinary, and hath not read the 39 Articles in his Presence, nor declared his Assent thereunto; and hath nor, upon the first Lecture-Day of every Month since he hath been Lecturer there, read the Service appointed for that Day, and declared his Assent thereunto, pursuant to the Statute in that Case made and provided; by reason whereof, and by Vertue of the said Statute, the said J. S. is disabled to preach, until he conform to the said Law: And whereas it doth likewise appear unto us, that the said J. S. after such Disability incurred as aforesaid, and before his Conformity, that is to say, on the third Day of this Instant June, hath preached in the Parish Church of H. aforesaid, contrary to the Form of the said Statute: These are therefore in Her Majesty's Name, to require you to apprehend the aforesaid J. S. and to convey him to the Common Gaol of the said County, and to deliver him safely to the Keeper of the said Gaol, together with this Precept; hereby also commanding you the said Keeper to receive the said J. S. into your Custody, and him safely there to keep for the space of three Months next ensuing the Date hereof. Given under our Hands and Seals, &c.

Conies,

3 Jac. cap.
13. But by
22 Car. 2.
'tis treble
Dam-
mages,
Commit-
ment for
3 Months,
and to find
Sureties for
good Beha-
viour.

ENtring wrongfully into a Ground enclosed; and per 22
& 23 Car. 2. cap. 25. tho' not enclosed, but which is
used for breeding Conies; and chasing, taking or killing
them, shall be committed for Three Months, and afterwards
pay treble Damages and Costs, and to be assessed by Justices
before whom convicted, and find Sureties for good Beha-
viour for seven Years, or be committed.

Killing

Killing or taking them in the Night-time upon Borders of Warrens, shall pay to the Party grieved what the Justice shall think fit before whom convicted; and to the Overseers of the Poor of the Parish where the Offence is committed, not exceeding 10 s. or be sent to the House of Correction, not exceeding a Month.

Conviction must be by Confession, or Oath of one sufficient Witness, within a Month after the Offence, and before one Justice of the Division, 22 & 23 Car. 2. cap. 25.

May appeal to the Sessions, whose Judgment is final.

A Man who hath only Right of Common, cannot kill Conies which destroy his Common, tho' he hath no other Remedy; the Reason formerly was, Because the Commoner hath nothing to do with the Land, but to put in his Cattle; the Property of the Soil is in the Lord, and so long as the Conies are on his own Land, he hath likewise a Property in them; and they may be called *Cuniculi facti*; but the latter Authorities are contrary, viz. That none can say whose Conies they are when they are on a Common, and that they being *fera natura* when they are out of the Warren, the Lord hath no Property in them till he takes them, and therefore the Commoner may kill them; but cannot have an Action on the Case, for that would be to create Multiplicity of Actions.

4 Leon. 7.

2 Cro. 195.

Cro. Car. 328.

An Indictment upon the Statute of 22 &

23 Car. 2.

Midd. ff. JUR. &c. quod J. O. de H. in Com. prad. Testas, 14 die Augusti, Anno Regni, &c. vi & annis, viz. baculis, falcastris & aliis armis Offensivis liberos Warrenam, R. B. apud H. prad. in Com. prad. circa horam duodecimam in nocte ejusdem diei fregit & intravit & in eadem libera Warrenia leporariis licitis & retibus vocat. Pursnets sine licentia & contra voluntatem prad. R. B. venerunt & quinquaginta Cuniculos valoris viginti & quinq; solidorum de bonis & catallis ipsius R. B. ad tunc & ibid. invent. ceper. & asportaver. ad grave dampnum ipsius R. B. & contra pacem dicta Domina Regina nunc. coron. & dignitatem suam necnon contra formam Statut.

Conjuratation.

ANY Person convicted to have used Invocation or Conjuratation of any Evil Spirit, or to have consulted, or any such Spirit, to kill, consume, or lame any Person; they,

they, with their Accessories, are Felons without Benefit of Clergy.

So likewise any Person convicted to have, by Witchcraft, Charm, &c. undertaken to tell where Goods lost or stolen may be found, or where they are, shall be committed for a Year without Bail, and shall once in every Quarter of that Year stand in the Pillory

Conspiracy.

Moor 562,
788, 815,
816.

THIS is an Agreement between two or more, falsely and maliciously to indict an innocent Man; who, after Acquittal by Verdict, hath two Remedies to punish the Offenders.

(1.) By a Writ of Conspiracy, which is a Civil Action, in which Damages are to be recovered.

(2.) By an Indictment at the Suit of the Queen.

The Action will not lie, unless the Party is *legitimo modo acquietatus*. *Nov 116.*

2 Cro. 230.
Yelv. 161.

And as to this Matter, there is a very nice Case, viz. Conspiracy, &c. for that they falsely procured him to be indicted, and to be imprisoned, *quousque* before such Judges, *legitimo modo fuit acquietatus*, and did not say, *inde acquietatus*: The Court was in some Doubt, because that Word was omitted, but certainly it could not be material; for having set forth that they procured him falsely to be indicted, &c. *quousque* he was acquitted; this could not be intended of any other Matter but that for which he was indicted.

There are Four Incidents to this Action.

| | | |
|----------------|---|---------------------------------|
| The Conspiracy | { | Malicious. |
| | | False. |
| | | Declared by some * Prosecution. |
| | | Voluntary. |

must be

* My Lord
Rafle tells
us, That a
False Con-
federacy to
indict ano-
ther, is pu-
nishable by
Indict-
ment, tho'
nothing is
put in ure.
Roll. Abr.
2 Part. 77.

The second Remedy against Offenders of this Nature, is by Indictment at the Suit of the Queen; and upon Con-
viction, the Judgment is,

That they shall lose their Free-Law, that is, they shall never be of a Jury nor Witnesses in any Case; shall never appear but by Attorney; their Lands, Chattels and Goods shall be seized into the Queen's Hands, their Trees cut down, and their Bodies imprisoned. *Starr. Placit. Coram.*

175. b. 3. Inf. 143.

The

The Reason of this Judgment, is because the Offenders have conspired the shedding innocent Blood, and that under a Pretence of Justice, by a Course of Law which is made for the Protection of the Innocent.

But there have been other Judgments given against these Offenders: As for Instance,

An Information was brought by one *Miller of Kent*, against *Gold. 209.* an Attorney and another, for a Conspiracy, maliciously to take away his Life, by accusing him for breaking open a Trunk, and taking out Money and a Lease, for which they indicted *Mr. Miller* at the Assizes; it was found *Ignoramus*, the Conspiracy was proved, and the Sentence was, That the Attorney should be degraded, and cast over the Bar; that both should lose their Ears, and be marked in the Face with the Letter C. to stand on the Pillory with Papers of their Offences, to be whipped, and each fined 500*l.* This Sentence was executed on them, *Anno 11 Jac.*

So where two conspired to accuse *Sir Anth. Ashley* for a Murder done 16 Years before. *Contrall* was to be the Accuser, and *Sir James Creighton* articulated with him, That he should have a sixth Part of *Sir Anthony's* Estate, and that he would beg the Whole of the King. *Contrall* agreed, and procured one *Smith*, who was Servant to *Sir Anthony*, to accuse both his Master and himself, for putting Poison into Drink, which the Master commanded him to carry to one *Rice*, which he did, and so poison'd him. For this Fact, he caused his Master and himself to be indicted, but afterwards discovered the Conspiracy, and *Creighton* was fined 1000*l.* and committed; another of the Defendants was fined 300*l.* and to stand in the Pillory, and be committed; another was to stand in the Pillory, and was burnt with a hot Iron on both Cheeks with the Letters F. and G.

Moor 8:17.

This Offence is not very common, and I can find but few Precedents of any Indictments for it: There is one in my Lord *Coke's* Entries, for conspiring the Death of a Privy Counsellor; which, with a little Variation, may serve for conspiring the Death of a Person of meaner Degree.

Indictment for conspiring the Death of another.

Suffex II JUR. &c. quod T. A. Deum pra oculis suis non habens
sed instigatione diabolica seductus 20 die Maii, Anno
Regni, &c. quarro & diversis diebus & vicibus antea & postea
apud L. in Com. prad. & in diversis aliis locis in eodem Com.
Suffex, illicite voluntarie & malitiose procuravit mori & insigni-
vit J. F. de, &c. ac quamplurimos alios subdit. dist. Domine Re-

Cok. Ent. 173.

*gine & cum eisdem adunc & ibidem conspiravit ad murtherand
H. G. de, &c. Armigerum, contra pacem dicta Domine Regine
Coron. & Dignitat. suas.*

Constable.

4 Inst. 123.

TIS not material in this Place to enquire, whether the Word or the Office is of *Saxon* or *Norman* Original.

Some are of Opinion, That upon the Increase of the People, the Sheriff alone could not take sufficient Care of the Peace of the County, but that it was divided into Hundreds, and a High Constable was appointed over each Hundred to preserve the Peace; but 'tis uncertain when this Division began, for Mr. *Selden* differs from the common Opinion of other Writers, who affirm it to be in the Reign of King *Alfred*, and he tells us it was before that Time.

But notwithstanding this Division (be it when it will) neither the Sheriff, together with the High Constables, could in After-times take due Care of the Peace in the County and Hundreds over which they presided; and therefore Petty-Constables were appointed for that Purpose in each Town, Village and Parish of every Hundred, to be assisting to the High Constables.

'Tis also incertain when this Division began; it seems to me to be very ancient, and that both High and Petty-Constable are Officers at Common Law; that the one was long before the Statute of *Winson*, and the other before the Beginning of the Reign of *Ed. 3.* so that such old Statutes which first mention this Officer, do only recite the Common Law.

How and
where
chosen.

It may be at the Leet, either by the Steward himself, or by Presentment of the Grand Jury there; but this must be warranted by Custom, and where a Court-Leet is usually kept, and in such Case the Justices of the Peace cannot interfere.

But where Neglects or Miscarriages are, either in keeping of such Courts, or chusing them, the Justices at their Quarter-Sessions may appoint and swear a High Constable, and this is the usual Course at this Time; but in case of Refusal, Death, or the Removal, one Justice of the Peace may chuse and swear another.

'Tis true, they may be sworn at any other Time by a Warrant from the Sessions, and they may also be chosen out of the Sessions by the greater Number of Justices of a Division: But this is not usual.

Constable.

175

He is chosen by the People of the Parish; only in Wales two Justices, *Quorum unus*, may, by vertue of the Statute of 34 H. 8. appoint this Officer.

He must be an honest, understanding and able Man, both in Body and Estate, and not of the meaner Sort; and therefore it has been held, that he is not to be chosen by House or by Custom, if not fit to execute the Office.

He is likewise to be resident where chosen, and if he is not thus qualified, two Justices, upon Complaint, may appoint another.

But 'tis now ruled, that a Custom for every Inhabitant to serve by Turns is good, for if it happen on a Woman, she may hire one to serve. *Sid. 355.*

Attorneys, Clergy-men, Justices of the Peace, Infants, Lawyers, Mad-men, Physicians, Poor, Old and Sick Persons,

But Tenant in ancient Demesne is not. *1 Vent. 344.*

Formerly it has been doubted whether he might make a Deputy, but now 'tis allowed; but *respondens superior* for his Mis carriage, unless the Deputy is sworn and allowed by the Court. *Sid. 355.*

Moon. 8453. Bull. 77. 1 Roll.

Dissenters, chosen Constables, may make a Deputy, per Statute *1 Will. & Mar.*

Justices may bind him over to the Assizes or Sessions, and there he may be indicted and fined; but you must alledge the Place where he was required to take the Oath, and before whom he refused to be sworn, and not *ad Sessionem* generally; otherwise it may be quashed. *1 Keb. 418. 1 Mod. 24. 13. Al. 78. 2 Roll. Rep. 78. 2 Sand. 291. Sid. 272. Stiles 394.*

It must be laid in the proper County where the Fact is supposed to be done, and if 'tis brought against him for any Thing in the executing his Office, he may plead the General Issue, and give the Special Matter in Evidence; and if the Plaintiff is nonsuited, or discontinued, or a Verdict for the Defendant, he shall have double Costs. *7 Jac. cap. 4. 1 Jac. cap. 12.*

If a Constable die, or remove out of the Parish, two Justices may chuse and swear another, and he is to continue in the Office till next Leet or Sessions, and then the Steward or Justices may either approve him, or appoint another and swear him. This Office is to continue for one Year; and if longer, Justices in their Sessions may discharge him.

Deputy-Constable, where chosen, and how he ought to be qualified.

Who are exempted, who not.

Deputy, whether he may make one. *Rep. 274.*

7 Jac. c. 5.

Refusing to serve. *Stiles 124.* You must alledge that he had Notice.

Action brought against him.

Power of Justices upon Death or Removal.

His

His Duty is to be considered under these several Heads following, viz.

| | | |
|-----------------|------------------------|-------------------|
| Affrays. | Gaming-Houses. | Papists. |
| Ale-houses. | Hedge-breaking. | Physicians. |
| Arms. | High-ways. | Plague. |
| Bridges. | Horse stoned. | Prisoners. |
| Clothiers. | Hue-and-Cry. | Rent. |
| Customs. | Juries. | Riots. |
| Deer-stealing. | Labourers, <i>vid.</i> | Rogues. |
| Dogs; Setting- | Servants. | Sabbath. |
| Dogs. | Malt-makers. | Superfedeas. |
| Escapes. | Measures. | Swearing. |
| Excise. | Militia. | Tobacco Planting. |
| Felons. | Ministers disturb- | Vagabonds. |
| Fish. | ed. | Warrants. |
| Forcible Entry. | Peace. | Watches. |

1. Affrays.

And First, his Duty concerning Affrays, and therein what is to be done to those who fight in his Presence.

Fighting in his Presence.

Assaulting, threatening to kill or beat another in his Presence, or whatever is a Breach of the Peace, he may carry the Offender before a Justice of Peace without a Warrant; but if the Fighting is over, he must have a Warrant, and this is to find Sureties for his Good Behaviour.

Quarrelling out of his Presence.

If the Quarrelling or Fighting is not in his Sight, and he is informed of it, and refuses to go to keep the Peace, he may be presented by the Grand Jury at Sessions, and fined.

About to quarrel.

He may command such to depart; and if they refuse or make any Resistance, he may justify the beating of them, may call others to his Assistance, and if either he or they happen to be killed, 'tis Murder.

Quarrelling in a House.

He may break open the Doors to see the Peace kept.

Wounded.

If any Persons shall be wounded in fighting, he may carry the Offender before a Justice of Peace, who may bail or commit, &c.

Most of the Things above-mentioned the Constable may do by virtue of his Office; for before Justices of Peace were made, he was *Conservator Pacis*, but he could not take Security by Recognizance or Bail, because he was not an Officer on Record: He might put a Man in the Stocks who broke the Peace in his View, but he could not arrest a Man to find Sureties of the Peace upon any Complaint made to him, unless he did actually see the Peace broken.

Open 105. A Man brought a Child about two Months old to the Church, and left it there, designing it should perish, the Constable

stable put him into the Stocks, and kept him there till he agreed to take the Child; and this was held justifiable, it being to prevent a Felony. *Moor 284.*

The Punishment of a Constable for neglecting to obey a Warrant from a Justice of Peace, consists in the Forfeitures following, *viz.*

If he doth not levy 20 s. to the Use of the Poor upon such who keep unlicensed Ale-houses, which he may sell after three Days; and if no Distress, then if he doth not whip the Offender, one Justice may commit the Constable without Bail, until the Ale-house-keeper is punished, or until the Constable pay 40 s. to the Use of the Poor.

If an Ale-house-keeper sells less than Measure, *viz.* full Quarts; then if the Constable doth not levy 20 s. he is to forfeit 40 s. to be levied by Warrant from one Justice; and if no Distress, to be committed.

If an Ale-house-keeper suffer Townsmen to be Tippling, and the Constable having a Warrant, doth not levy the 10 s. shall forfeit *ut prius*, &c. if no Distress can be had, he must certify that Default within Twenty Days, or forfeits 40 s. *ut prius*.

Upon those convicted of Tippling, he must levy the Penalty of 3 s. 4 d. or if he neglect having a Warrant for so doing, forfeits 10 s.

Upon those convicted of Drunkenness, he must levy 5 s. for the Poor; if the Party is not able to pay it, he must sit in the Stocks six Hours, &c.

If he pay, or offer to pay ready Money, and is refused; a Constable may cause him to be indicted next Sessions, and there he may be fined and committed.

He may take Arms from them who ride or go armed in Terrour of the People, and may carry such Persons before a Justice of Peace to find Sureties.

They must assist such Persons who have a Warrant from the Lord Lieutenant, or his Deputy, to search for Arms, &c. which must be in the Day-time, unless in Towns; and if resisted, may enter with Force.

Where a common Bridge is in Decay, and it cannot be known who or what Lands are to repair it, the Constable and Two of the most able Inhabitants in the Parish must assess, and Four Justices must allow such Assessment.

They must pay Work-folks ready Money, and the Work-folks must perform their Duty in their Occupation, or forfeit double Damgages to the Party grieved, and the High Constable of a Hundred may hear and determine Complaints of

Ale-house
unlicen-
sed.

Selling less
than Mea-
sure.

Suffering
Tippling.

Convicted
of Tip-
pling, or
being
drunk.

Refusing to
lodge Tra-
vellers.

Arms.

Bridges.

Work-folks

the Clothiers and Work-folks, and may commit the last till they make Satisfaction for the Dammiages.

High-Constable may search for, and seize Ropes, Winches, &c. used for unlawful stretching of Clothes, and if resisted, the Party forfeits 10 l.

Custom.

A Constable must, upon Request, assist such Persons who have a Warrant from the Lord Treasurer, Barons of the Exchequer, or Chief Magistrate of Ports, to search for Goods which have not paid Custom; and he may (if within a Month after the Offence) enter into any House in the Day-time; and, if resisted, break it open.

He must be assisting to all Persons appointed by the Queen to collect or manage her Customs.

**Deer-
Stealers.**

They forfeit 20 l. being convicted before one Justice, either by Confession, or Oath of one Witness, of hunting, taking, killing, wounding of Red or Fallow Deer, in any Place enclosed for keeping Deer; and 30 l. for every Deer taken, wounded or killed: These Penalties the Constable is to levy by a Warrant from the Justice of Peace by Distress, or may detain an Offender, not exceeding two Days, if he do not presently pay the Money due upon Conviction, till he can make a Return of his Warrant of Distress.

He may enter any suspected Place by a Warrant from the Justice of Peace, and carry away Venison, Skins of Deer, Toils, &c. and the Offender before the Justice of Peace to give an Account how he came by them.

Dogs, &c.

A Constable may, by a Warrant from two Justices, search any suspected Houses of Persons who have no free Warren, or who are not Lords of Manors, or who have not an Inheritance of 40 l. or a Freehold of 80 l. *per Annum*, or who is not worth 400 l. and keeps Dogs or Nets, &c. and may kill and destroy them.

Escapes.

If he suffer a Felon to escape before he is actually in Custody, 'tis a Misdemeanour, for which he may be indicted and fined; but if he was actually taken, and then he voluntarily suffer him to escape, or to destroy himself, 'tis Felony in the Constable; but if the Escape is by Negligence, or involuntary, 'tis only finable; but the Place where the Party was taken, and where he escaped, must be alledged in the Indictment.

But he must set forth for what Felony he was taken, and when it was

committed. *Cro. Eliz. 752. Cro. Eliz. 200.*

If he discharges any Person taken upon Suspicion of Felony, 'tis justifiable if no Felony was committed; but otherwise he must not discharge him, tho' he knoweth that the Party is innocent; but it must be done by due Course of Law.

He may put a Felon into the Stocks, and lock him in, or put Irons upon him, or pinion him to prevent Escapes when he is about to carry him before a Justice of Peace, or to Gaol.

Officer of Excise must have a Constable when he enters into a Brew-house by Night to gauge Fats or Vessels.

Excise.

A Constable, by a Warrant from Justices, is to levy the Penalties on the Offenders against any Law of Excise, by Distress, &c. and if none, &c. may carry him to Gaol.

Maker or Retailer of Vinegar, Cyder, &c. for Sale, refusing a Gauger to enter in the Night-time with a Constable, forfeits 15 l.

Brewer so refusing, forfeits 20 l.
Exciseman suspecting secret Conveyance of Worts, may upon Request, and in presence of a Constable, break open a Door in the Day-time, and if opposed, forfeits 20 l. by the 7 & 8 Will. cap. 30.

A Constable is bound, *ex Officio*, to endeavour the taking of Felons, and may raise Men to assist him; he may likewise apprehend upon Suspicion, and upon Complaint or common Fame, may search suspicious Houses.

Felons.

If a Felon fly, the Constable may seize, and make an Inventory of his Goods, and send Hue and Cry after him; that is, he may raise the Town at any Time, and give the next Constable Notice: The Neglect is finable by the Justices.

If upon such Flight he is apprehended in another County, the Felon must be committed where taken, and not where the Fact was done.

Two Justices, *Quorum unus*, are to set a Tax upon every Parish in a Hundred, where Damages are recovered against any one or more Inhabitants of that Hundred, upon the Statute of *Winton*; and the Constables of every Parish are to set a Tax upon every Inhabitant of these Parishes where they refuse to contribute, and may levy the same by Distress, &c.

Those who fish in Nets of less Meshes than three Inches and an half from Knot to Knot, or other Engine, to destroy the Breed of Fish along the Sea-Coast, or in any Haven or Creek, or within five Miles thereof, forfeits 10 s. to be levied by the Constable by Warrant from one Justice.

Fish.

They are to search (by like Warrant) in *Shropshire*, *Worcestershire*, and *Gloucestershire* for any unlawful Nets used to take Fish in the *Sewern*, and to seize such Nets, and carry them to the Quarter-Sessions.

Forzible
Curp.

If he refuse to assist the Justice in removing the Foree, or carrying the Offender to Gaol, he may be committed himself, and fined.

Games.

He must once a Month search Houses where unlawful Games are kept, as Tables, Tennis, Bowls, &c. and may commit the Master of the House, and the Gamesters, till they give Sureties not to do the like again; if the Constable neglects, he forfeits 40 s. for every Default.

He may, by Warrant from one Justice of Peace, enter and search the suspected Houses of any Person not qualified, and if he find any Game there, shall carry the Offender before a Justice of Peace. 4 & 5 W. & M. cap. 23.

Bydge-
Break-
ers.

Convicted by Oath of one Witness before a Justice of Peace; and their Procurers and Receivers, knowing the same, must give the Party Satisfaction; if they cannot, then a Justice of Peace must commit them to the Constable, who must whip them for the first Offence; if the Constable neglect, then he may be committed without Bail, until the Offender is whipped. 43 Eliz. cap. 7.

He hath Power to apprehend suspected Persons for carrying Bundles of Wood, &c. and may by Warrant from one Justice of Peace enter into the Houses of such suspected People, and if they find any, then to take the Offender, and those in whose Houses, &c. the Wood is found, &c. and carry him before a Justice of Peace. 15 Car 2. cap.

High-
ways.

He must, on every Tuesday and Wednesday in Easter Week, call together the Inhabitants, and chuse Two Surveyors for the next Year; and for his Neglect, may be fined by the Justices in Quarter-Sessions: Which Fine is to be estreated by the Clerk of the Peace, and that shall be a Warrant to the High Constable to levy it; and if no Distress be found, or he do not pay the Fine within Twenty Days after Demand, forfeits double so much.

He must then likewise appoint six Days between that and Midsummer for mending the Ways, and the next Sunday must give Notice of those Days in the Church, under like Pain: This was enjoined by former Statutes.

But now by the Statute of 3 & 4 W. & M. Constables, &c. and Inhabitants, must meet the Day after Christmas-Day, and the greater Part of them so met, must agree on a sufficient Number of Men who have 10 l. per Ann. or are worth 100 l. or rent 30 l. per Ann. and if no such, then of the most sufficient Inhabitants; which Number of Lists, the Constable must return to the Justices at a Special Sessions on the third Day of January following; and if not held then, must be held within fifteen

fifteen Days after; and Justices in such Cases must give the Constables ten Days Notice, and then Justices may, under Hand and Seal, appoint one or more Surveyors for every Parish within that Division, &c. and the Constable must serve such Surveyors with a Justice's Warrant within six Days after Appointment; and not returning such List as aforesaid, forfeits 20 s. &c.

A Constable must assist such who call him to seize stoned Horses put into Commons where Mares are usually kept; which Horses are not (at the Age of two Years) fifteen Hands high, the Horses must be brought to the next Pound and measured by a Constable in the presence of three Men; if he refuse to measure, forfeits 40 s.

In Fenn Grounds the Horses may be but 13 Hands high.

A Constable is to raise Hue and Cry upon Notice, and describing the Felon, and telling him which Way he is gone; and for this Purpose he may call upon the Parishioners to assist him in the Pursuit of the Felon to the next Constable, and he to the next, &c. and in the mean Time to make an Inventory of his Goods in the Presence of his Neighbours: If he refuse to pursue the Offender, he may be indicted, &c. but the Place where he gave Notice must be set forth in the Indictment. 10 Eliz. 655.

He was indicted, for that a Burglary was committed by Persons unknown, and that J. S. gave him Notice thereof, and required him to make Hue and Cry, which he refused: Exception was taken to the Indictment, because the Prosecutor did not alledge where he gave him Notice; and this was held a material Exception.

Constables, &c. must every Year at Michaelmas Sessions give in a List of their Names and Places of Habitation within their respective Limits, of all Persons qualified to serve on Juries between the Age of 21 and 70 Years; and if he neglects, forfeits 5 l. to the Queen.

The Qualifications are 80 l. per Ann. for a Grand Jury-man, and 10 l. per Ann. for a Petty Jury-man. 7 & 8 W. cap. 32.

A Constable, *ex Officio*, may in Hay or Corn-Harvest set any ordinary Tradesman on work by the Day, being required by those who want Labourers; and put them into Stocks for two Days and a Night if they refuse; and the Constable neglecting his Duty herein, forfeits 40 s.

He is bound to search and view Malt made to be sold, and if it be not steeping and drying three Weeks; if half a Peck

Horses stoned.

Hue and Cry.

Cro. Eliz. 654.

Juries.

Labourers.

Watt.

of Dust is not sifted or fanned out of every Quarter; if it be made of Mow burnt Barley, or Tired, or good and bad mixed together; besides the Penalty inflicted, the Constable, with the Advice of one Justice, may sell the same at such Rates as the Justices shall please.

Measures, *Vide* Weights.

Minister They are to levy the Money charged upon any Person by the Lord Lieutenant or his Deputies, for the providing Arms for Horse and Foot Soldiers; and if no Distress is to be found, may by Warrant from the Lord Lieutenant, &c. commit the Offender until he make Satisfaction.

**Minister
Disturbed.**

A Constable, *ex Officio*, may apprehend the Offender, and carry him, before a Justice of Peace.

Oath, *Vide* Presentment.

Physicians.

Constables in London, and within seven Miles, are to be assisting to the President of the College of Physicians, and such who shall have any Authority from him, &c. to put the Laws in Execution concerning the College: The Neglect is a Contempt to the Queen.

Plague.

He may command any Person infected to keep within his House; and if after such Command he wilfully go Abroad, having a Sore upon him, 'tis Felony; and if no Sore, he may be punished as a Vagabond, and bound to his Good Behaviour for a Year.

If he neglects to levy the Money appointed by Justices to relieve poor People infected, forfeits 10 s. for every Offence.

**Popish
Recu-
sants.**

A Constable is to certify to the Quarter-Sessions the Names of Popish Recusants convicted, who within twenty Days after they arrive to the Place of their Birth (if they have no certain Abode elsewhere) give in their Names to him; which they are enjoined to do, and the Minister is to enter their Names in a Book for that Purpose.

They must once a Year present to the Quarter-Sessions those who absent themselves for the Space of a Month from Church, and the Names of their Children above nine Years old living with their Parents, and such Servants as they retain, or forfeit 20 s. for every Default. 3 Jac. cap. 4.

**Carrying
Prisoners
to Gaol.**

He, by Warrant from a Justice of Peace, may sell the Offender's Goods to defray his Charges, and of those who carry him to Gaol; but such Goods must be appraised by some Inhabitants of the Place.

If

If the Offender hath no Goods, then the Town where he was apprehended must be at this Charge; and the Constable, &c. and three Inhabitants, may impose a Tax on every Inhabitant; which being allowed by a Justice of Peace, the Constable by Warrant may levy it on those who refuse; and being appraised by Four Inhabitants there, may sell it.

If a Constable be sued, he may plead the General Issue, and shall have treble Damages besides Costs, if he recover.

In conveying a Felon either before a Justice or to Gaol, he may lock him in the Stocks, if unruly, to prevent his Escape.

Before I treat of this, I shall mention his Oath, *Viz.*

YOU shall swear, That you shall well and truly execute the Office of a Constable, or Headborough, for the Town, or for the Parish of H. for the Year ensuing, and until another be sworn in your Room, or until you shall be legally discharged thereof.

This Oath is now administered for the Shortness of it, but by the other Oath he was usually sworn to these Particulars, *Viz.*

| | |
|---|--|
| Affrays to suppress and prevent. | Peace to keep, &c. |
| Armed Men to arrest. | Rescues to prevent. |
| Barretors to apprehend. | Riot to suppress and apprehend. |
| Bloodshed to prevent. | Rogues to punish. |
| Drunkenness to prevent. | Vagabonds. |
| Felons to apprehend. | Warrants to execute. |
| Gaming-houses and Gamesters to prevent. | Watch to keep. |
| Hue and Cry to see made. | And all other Things relating to his Office, according to his Ability. |
| Idle Persons punished. | |
| Night-walkers to punish. | |

This he is bound to do, but few make true Presentments of these Offences within their Liberties; they make Returns formally, and bring them to a Justice to sign, and carry them to the High Constable, who makes Oath that he had them from the Petty Constable: And they are not altered when they signify nothing.

It hath been lately questioned, Why a High Constable should be sworn by a Matter of Form, and not a Petty Constable to the Substance of Return? Which, as a late Author observ'd, ought to be carried to a Justice some Time before the Sessions, to be examined to the Truth of every Article.

Few Parishes there are, but what have Inmates and unlawful Cottages; and this must unavoidably fall under their Observation.

Presentment.

The Constable's Oath.

Rendr.

A Constable must assist the Party distraining, and swear two Men to appraise the Goods, and the Overplus, after Debts satisfied, may be left in his Hands.

Riots.

He is, *ex Officio*, to suppress all Riots, and to commit the Offenders, and all such who break the Peace.

Rogues.

A Constable is to endeavour to seize Rogues, Vagabonds, &c. wandering and begging within their Liberties, or forfeits 10 s. If any Person bring a Rogue to him, he must receive him, and see that he is punished, or forfeits 10 s. to be levied by Warrant from two Justices.

He must punish him thus, *viz.* Being assisted by the Minister of the Parish, and one more, he must cause the Vagrant to be stripped naked from the Middle upwards, and whipped till he bleed; then he must send him to his Place of Birth, and if that is not known, then to the Place of his last Abode for one Year, before Whipping; and if that is not known, then to the Town through which he passed last unpunish'd; and if it cannot be known there where he was born, or dwelt, then to the House of Correction, &c. to be employed in Work, or in Service for a Year.

A Constable, &c. is to give him a Testimonial of the Day and Place of his Whipping, and if he is negligent, he forfeits 10 s. Or such Constable who doth not receive a Rogue, who is to be conveyed from one Town to another till he comes to the Place of his Birth, &c. he forfeits 1 l. or if he receives him and doth not convey him to the next Constable, the like Penalty. 39 Eliz. cap. 4.

Sabbath.

He must levy the Penalty of 3 s. 4 d. by Warrant from one Justice, of such who use unlawful Games; and if he cannot distrain, must put the Offender in the Stocks for three Hours.

Those who on that Day keep or resort to Bowling, Church-Ale, Dancing, Ringing, or any Sport whatsoever, forfeits 5 s. if above 14 Years old; if under, 12 d. which the Constable must levy by Warrant of one of the Justices of the Peace by Distress; and if no Distress can be taken, then to be put three Hours into the Stocks.

He must likewise levy 6 s. by Warrant on a Butcher, who shall kill or sell Flesh on that Day.

Swear-
ing.

Being convicted thereof, if the Offender is a Servant or Labourer, &c. forfeits 1 s. to the Poor, and every other Person 2 s. and double for the second Offence, and treble for the third, to be levied by Warrant of one Justice and Constable, &c. 6 & 7 W. & M. cap. 11.

Constable.

185

If a Constable have a Warrant to execute for Sureties of the Peace, and afterwards has a *Superfedeas* from the Court of Chancery, or from another Justice, &c. to discharge the Sureties; yet if he will persist to have the Party find Sureties, and he refuse and is detain'd, 'tis false Imprisonment, &c.

Superse-
deas.

A Constable, &c. upon Information of planting above half a Pole of Tobacco, must within 10 Days destroy it.

Tobacco.

Constables must cause Night-Watches to be set from *Whitsontide* till *Michaelmas*, viz. from Sun-set to the rising thereof, with 4 Men or more, who must be able, and Inhabitants of the Place, and watch by Turns; if they refuse, the Constable may complain to the Justice of Peace, who may bind the Party refusing to Good Behaviour, &c.

Whitth.

A Constable appointed a Man to watch, and because he refused, he put him into the Stocks: In an Action of false Imprisonment, the Defendant justified as Constable, but did not shew that the Plaintiff was an *Inhabitant of the Town*, for he might be a Stranger, and then he could not appoint him to watch, nor put him in the Stocks for refusing, but must complain to a Justice of Peace.

Cro. Eliz.
204.

He must not dispute, but execute them; and if the Justices exceed their Authority, the Constable is excused.

Warrants
to execute.

But if the Justice of Peace sends a Warrant to execute where he hath no Authority, or where he is no proper Judge, a Constable may be punished if he execute it.

So if 'tis plain that the Warrant is mistaken in the Penalty, or if it command the Constable to do something out of his Precinct.

He need not shew his Warrant, but may acquaint the Party with the Contents of it.

If he apprehend a Person without a Warrant, and obtain one afterwards, 'tis false Imprisonment.

If he let the Person go upon his Promise to return and appear before the Justice of Peace, he cannot retake him by virtue of his first Warrant; but if the Party escaped, he may pursue him, though in another County, and bring him back to the Justice of Peace.

If there are two Persons of one Name, and the same Addition, and the Constable takes a wrong Person, 'tis no false Imprisonment.

But if the Warrant is against a particular Person by Name, and he apprehends another who is really the Offender, such taking is wrongful, and the Party may have his Action of false Imprisonment, but will recover but little Damages.

A Man

A Man may be bound to his good Behaviour for any Abuse or Contempt to the Justices Warrant, and may be indicted and fined for it.

In Cases of Treason, Felony, or Breach of the Peace, a Constable may by Warrant from a Justice of Peace break open an House to take the Criminal; but first he ought to require the opening of the Doors, and to acquaint the Person for what Purpose he came thither.

If he is indicted for not executing of a Warrant, you must shew some particular Act of Disobedience, and not generally, that he did not execute it. *Trin. 20 Car. B. R.*

He may justify the detaining an Offender for a Day, by the Command of a Justice of Peace without a Warrant, not having an Opportunity then to examine him. *Moor 408.*

A Warrant or Superseedeas for discharging of a Petty-Constable, and to swear another.

ANNA Dei, &c. Vicecomiti Suffex, necnon capitali Constabulario Rape de Lewes & eorum cuilibet salutem. Quia R. N. & R. W. Constabularios Ville de H. pro certis causis nos moventibus ab Officiis suis exonerari fecimus, ideo vobis & cuilibet vestrum mandamus quod R. P. & R. Q. jurari faciatis bene & fideliter exequi omnia & singula eidem officio incumbencia prout ipsi nobis respondere voluerint dictisque R. N. & R. W. similiter injungente quod ipsi de officio predicto ulterius exercendo nullatenus se intromittant quousque aliud mandatum de nobis habuerint & quicquid in premissis feceritis Justiciariis nostris ad pacem nostram in dicto Comitatu conservandam assignat ad proximam Generalem Sessionem pacis apud L. in Com' predicto tenendam certificetis, hoc preceptum nostrum cum & ibidem remittentes. Teste R. B. uno Justiciarium nostrorum predicto, 1 die Junii, Anno, &c.

This Warrant above-written, made by the Justice in the Queen's Name, and in the Name of the Sheriff, is now dissolved, and the Justice may make the Warrant in his own Name, as followeth, viz.

A Warrant to remove a Constable, continuing in his Office above, a Year.

To R. N. of H. Yeoman.

Suffex ss. VHereas it appeareth to us, R. B. and W. two of Her Majesty's Justices of the Peace for the County aforesaid, That R. N. hath lately executed the

13 & 14
Car. 2.
cap. 12.
2 Justices.

Office

Office of a Headborough, in and for the Parish of *H.* afore-
said, during the Space of one whole Year, and doth still con-
tinue to execute the said Office after the Expiration of the
said Year, contrary to the Form of the Statute in that Case
made and provided : Now we do hereby, according to the
Power and Authority given unto us concerning the Premis-
ses, discharge you the said *R. N.* from the Office of Consta-
ble in and for the said Parish of *H.* requiring you from hence-
forth to forbear the Execution thereof in any Matter or
Thing whatsoever, until further Order shall be taken therein.
Given under our Hands and Seals, &c.

*A Warrant for a new Constable to appear and be
sworn.*

To *W. P.* of *H.* Yeoman

Suffer **W** Hereas *R. N.* hath lately been discharged
by us, *R. B.* and *W. N.* two of Her Ma-
jesty's Justices, &c. for that he continued to execute the
Office of a Constable for the Parish of *H.* afore said, above the
Space of one whole Year : Or whereas *R. N.* late Constable of
the Parish of *H.* is departed this Life, (or) is removed with
himself and Family out of the Parish of *H.* within the Year
in which he should have served in the Office of Constable ;
or is, by reason of his Age and Inability, not capable to exe-
cute, &c. the said Office : These are therefore to require you,
and in Her Majesty's Name to charge and command you, Per-
sonally to come before us, or before some other of Her Ma-
jesty's Justices of the Peace for the said County, to take the
Oath of a Constable, to serve Her Majesty within the Town
or Parish of *H.* And hereof fail not. Given under our
Hands and Seals, &c.

13 & 14
Car. 2.
cap. 12.
2 Justices.

If the Con-
stable die,
or remove
into ano-
ther Parish,
then say,

By the Statute of 3 *Jac.* cap. 10. An Offender who is to
be carried to Gaol must bear his own Charges, and of those
who convey him ; if he refuse, then the Constable, by War-
rant from one Justice, may sell his Goods, &c.

A
County of *W.*
Justice of the Peace for the
County of *W.*
do hereby require you,
the said *R. N.* to appear
before us, or before some
other of the Justices of the
Peace for the County of
W. to take the Oath of
a Constable, to serve Her
Majesty within the Town
or Parish of *H.* And hereof
fail not. Given under our
Hands and Seals, &c.

A Warrant to levy upon the Offenders Goods the Charges of carrying of him to Gaol.

To the Constable of the Parish of *H.* in the County of *Sussex.*

3 Jac. 10.
one Justice.

Sussex **J.** **V** Hereas it appeareth to me, upon the Complaint of the Parishioners of *H.* in the County aforesaid, That the Charges of *J. O.* and of those who conveyed him to Gaol, being sent thither by my Warrant upon Suspicion of Felony, did amount to 15 *s.* and that the said *J. O.* hath Goods and Chattels within your Township sufficient to defray the said Expence: These are therefore in Her Majesty's Name, to command you to levy the said Sum of 15 *s.* by Distress and Sale of the Goods of the said *J. O.* within your Parish, causing the same before the Sale thereof to be appraised by some of the Neighbours there, and that you pay the said Sum unto the Parishioners of *L.* * in your said County; and hereof fail not, &c.

* *Viz.*
where he
was taken.

If the Offender hath no Goods, &c. then the Constable and Church-wardens, and three of the Inhabitants, and if there are no such Officers, then four of the principal Inhabitants, may tax all the rest; which Tax must be allowed by one Justice: And if they refuse, then by a Warrant from one Justice the Officer may levy it.

The Form of the Rate or Tax.

A Rate or Tax made by us, whose Names are hereunto subscribed, the 30th Day of *June*, 1701. being the Constable, Church-wardens, and three other Inhabitants of the Parish of *L.* in the County of *S.* where *J. O.* was lately taken and conveyed to the Common Gaol of the said County upon Suspicion of Felony; which said Tax is made by us, and charged upon the Inhabitants of the said Parish, to defray the Charges for carrying the said *J. O.* to Gaol, he having no Goods to satisfy the same.

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|------------------------|-----------|-----------|-----------|
| Imprimis, <i>A. B.</i> | 0 | 1 | 0 |
| <i>C. D.</i> | 0 | 0 | 9 |
| <i>E. F.</i> | 0 | 2 | 0 |
| <i>G. H.</i> | 0 | 1 | 3 |

I *R. B.* Esq; one of Her Majesty's Justices of the Peace for the County of *Essex*, do allow the Tax above-written. Witness my Hand this 30th Day of *June*, 1701.

R. W. Constable.
A. B. } Church-war-
C. D. } dens.
E. F. }
G. H. } Inhabitants
J. K. } *H.*

If they refuse to pay the several Sums at which they are taxed, then levy it by this Warrant, &c.

A Warrant to levy the Tax upon those who refuse to pay, &c.

To the Constable, Tything-man, &c. of the Parish of H. in the County of *Suffex*, &c.

Suffex ss. **W**Hereas the Persons whose Names are underwritten, have been lawfully taxed in the several Sums herein after-mention'd, and which are added to their respective Names, in order to satisfy the Charges expended by A. B. and those whom he called to his Assistance to carry J. O. to Gaol; which said Persons have refused to pay the same, contrary to the Form of the Statute in that Case made and provided: These are therefore to require you, or either of you, to levy the said Sums upon the several Goods and Chattels of the respective Persons so taxed as aforesaid, and refusing to pay the same, returning the Overplus to them respectively. Given under our Hands and Seals, &c.

3 Jac. c. 10.
one Justice.

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-------------|-----------|-----------|-----------|
| A. B. _____ | 0 | 1 | 0 |
| C. D. _____ | 0 | 0 | 9 |
| E. F. _____ | 0 | 2 | 0 |
| G. H. _____ | 0 | 1 | 3, &c. |

By this Statute, the Constables and other Inhabitants of the Parish may tax all Persons chargeable, by the 43 *Eliz. cap. 2.* to reimburse their Charges for conveying Vagabonds, &c. to the House of Correction, and for other Parish Charges.

13 & 14
Car. 2.
cap. 12.

Now the Persons to be taxed by the Act are, every Inhabitant of the Parish, the Parson or the Vicar, and every Occupier of Houses, Lands, Tythes and Woods, but the Landlord is not to be taxed in respect of his Rent.

The Tax upon Lands is to be made according to the Yearly Rent, but no Man is to be taxed for the Stock he hath upon the Lands; but if a Clothier or Merchant, having a considerable Stock in Trade or Merchandize, and occupy Lands, they may be taxed for both.

The Taxation of Personal Estates must be in the Parish to which 'tis taxed, and after the Rate of 5 *l.* for every Hundred.

This Tax or Rate must be confirmed under the Hands and Seals of two Justices of the Peace, and then if the Persons taxed refuse to pay, the Constable, by Warrant from two Justices, may levy it.

First,

Constable.

First, if the Inhabitants refuse to make a Tax, two Justices may make a Warrant, requiring them to do it. The Form of which Warrant may be thus :

A Warrant, inabling the Parishioners to make a Tax to reimburse the Constable.

To *A. B. D. E. G. H. K. L.* and other the Inhabitants of the Parish of *H.* in the County of *Sussex*.

Two Justices.

Sussex ss. **W** Hereas we are inform'd by *W. W.* Constable of your said Parish, That he hath expended several Sums of Money in the necessary Execution of his Office, and that he hath not been reimbursed the same, but hath desired our Direction and Assistance for that Purpose : These are therefore in Her Majesty's Name to require and command you, or the greater Number of you, who shall be met together upon Notice of this Precept, to examine the Accompts of the said Constable relating to the Premises ; and that if you shall find his said Expences to be necessary in the Execution of his said Office, that then you forthwith do tax every Inhabitant within your Parish, in several and proportionable Sums, amounting to so much as will reimburse him. And we do likewise hereby give Authority to the said Constable to demand and collect the respective Sums so assessed ; and that if any Person so taxed shall refuse to pay the same, that then the said Constable do return unto us, or to some other Justice of this County, the Names of the Persons refusing. Given under our Hands, &c.

The Names of the Persons refusing to pay the Tax being returned by the Constables to the Justices of the Peace, then they may issue forth this Warrant, to appear and shew Cause why they refuse to pay, &c.

To the Constable, Tything-man, and other Officers of the Parish of *H.* in the County of *Sussex*, &c.

Sussex ss. **T** Hese are in Her Majesty's Name to command you, That you, or some or one of you, do give notice unto *A. B. R. W. H. C.* to appear before us at the House of *J. T.* Innholder, called or known by the Sign of the *Star* in *L.* in the said County, on *Monday* the second Day of this Instant *June*, at 10 of the Clock in the Morning of the same Day, to shew Cause why they severally refuse to pay the respective

respective Sums of Money assess'd upon them, for and towards the Reimbursement of the Charges which *W. W.* Constable of the Parish *H.* afore said, hath sustained in the necessary Execution of his said Office. And hereof fail not. Given under our Hands and Seals, &c.

If they appear, then two Justices may bind them over to appear at the Sessions; if they think fit so to do: The Recognizance is as followeth, in Parchment.

Suffex ff. **M**emorandum quod secundo die Maii, Anno, &c. venerunt coram R. B. & W. N. Armigeris, Justiciariis dictae Domine Regine ad pacem in Com' praed' conservand. assign. A. B. de P. in Com' praed', Yeoman, & D. E. de G. in Com' praed', Husbandman, & recognoverunt se separatim debere dictae Dom. Regine in quinque libris bonae & legalis monetae Angl. de bonis & catallis terris & tenementis suis fieri & levare ad opus dictae Dom. Regine. si respective defecerint in Conditione infra scripte.

THE Condition of this Recognizance is such, That whereas the above-bounden *A. B.* and *D. E.* have severally refused to pay to *W. W.* late Constable of the Parish of *H.* in the County afore said, such Sums which have been severally and respectively assessed upon them, in order to reimburse the said Constable what hath been necessarily expended by him in the Execution of his said Office: If therefore the said *A. B.* and *D. E.* shall Personally appear at the next General Quarter Sessions of the Peace, to be held for the said County at *L.* in the County afore said, and shall then do and receive what shall be enjoined by the said Court relating to the Premises; then this Recognizance shall be void, or else to stand in full Force and Vertue.

Capt. & cogn. secundo die Maii,
Anno supradicto coram nobis,

R. B. W. N.

When they appear at the Sessions they may be presented and indicted there, setting forth, That the Assessment was reasonable, and it must appear to be for a Constable's Rate, and conclude, *contra formam Statuti.*

If they refuse to appear upon Notice, then the Justice may issue forth this Warrant:

Constable.

To the Constable and Tything-man of, &c.

Sussex ss. **W** Hereas we are informed, That *A. B.* and *D. E.* of your Parish, Yeomen, had Notice given unto them respectively to appear before us at a certain Time and Place mentioned in a former Warrant for that Purpose, to shew Cause why they did not pay unto *W. W.* late Constable of the Parish of *H.* aforesaid, the respective Sums assessed upon them towards the Reimbursement of his necessary Charges in the Execution of his said Office: And whereas they have refused or neglected to appear according to the Purport of the said Warrant, or to pay the said Money; These are therefore in Her Majesty's Name to command you to bring the aforesaid *A. B.* and *D. E.* before us, or some other Justice of the Peace for this County, at the House of *J. T.* in *L.* upon *Tuesday* next, by Ten of the Clock in the Forenoon of the same Day, to answer the Premisses. Given under our Hands and Seals, &c.

If they appear before the Justices, and they do not think it expedient to bind them over to the Sessions, then they may grant a Warrant to distrain, &c. for the Charges, as followeth:

To the Constable and Tything-man of the Parish of H. in the County of Sussex.

Sussex ss. **W** Hereas it appeareth unto us, upon the Complaint of *J. O.* late Constable of the said Parish, That *A. B.* and *D. E.* Inhabitants of the aforesaid Parish, have refused to pay the Sums herein after written; that is to say, The said *A. B.* hath refused to pay 2 s. and the said *D. E.* 2 s. 6 d. being severally assessed upon them towards the reimbursing such Charges which the said *J. O.* hath necessarily expended in the Execution of his said Office: These are therefore to require you to levy the said respective Sums so assessed upon the said Persons by Distress and Sale of their respective Goods, rendring to them the Overplus, if any shall be. Given under our Hands and Seals, &c.

If the Constable doth not cause Rogues and Vagabonds to be whipped, then the Justices may send a Warrant to levy the Penalty of 10 s. for every Default.

To the High Constable of the Rape of L. or to his Deputy.

Suffex ss. **W** Hereas *A. B.* a Vagabond, was lately seen wandering in the Parish of *H.* in the said County, and *J. O.* being then Constable of the said Parish, having Notice thereof, did neglect to call to him the Assistance of the Minister, and one other Inhabitant thereof, to appoint the said *J. O.* to be stripped and openly whipped, pursuant to the Statute in that Case made and provided; for which Default he hath forfeited the Sum of Ten Shillings: These are therefore in Her Majesty's Name, to require you, upon Receipt hereof, to demand the said Ten Shillings of the said *J. O.* and if he shall refuse to pay the same, that then you forthwith levy it by Distress and Sale of his Goods and Chattels, returning to him the Overplus; and for your so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

39 Eliz.
cap. 4. two
Justices.

If begging;
then the
Constable
forfeits
20 s. not
punishing
him.
7 Jac. cap. 4.

The Confession of the Party, or Proof by Two Witnesses before Two Justices, is a Conviction. The Ten Shillings must go to the Poor of the Parish, or to the Maintenance of the House of Correction, as the Justices of the Peace shall think fit.

A Warrant to make a privy Search.

To the Constable and Tything-man of the Parish of *H. &c.*

Suffex ss. **T** Hese are to authorize and require you to call to your Assistance some sufficient Men of your Neighbourhood, and that in one Night, before the Tenth Day of this Instant *May*, you make a privy Search in all suspicious Places within your Precinct, to find out and apprehend Rogues, Vagabonds, and other suspicious Persons there; and that you cause such as you shall so find, to be brought before us *R. B.* and *W. N.* Two of Her Majesty's Justices of the Peace for the said County, at the House of *J. O.* in *L.* in the County aforesaid, on *Thursday* the Tenth of *May* aforesaid, to be examined, and punished as We shall see Cause; and that you appear there likewise to give an Account touching the Premises. Given under our Hands and Seals the Fifth Day of *May*, &c.

7 Jac. cap. 4.

R. B. W. N.

The Justices must meet twice a Year to execute this Statute, and the Warrant above-written must be sent to the Constable Five Days before their Meeting; and if the Constable

stable shall not appear at that Meeting, or not give an Account upon Oath (when he doth appear) what Rogues he hath taken ; or if he do not convey to the House of Correction such of them as the Justices of Peace shall commit, may be fined any Sum under 40 s. and a Warrant as followeth :

To the High Constable of the Rape of L. in the County of Suffex.

7 Jac. cap. 4.
Two Justices.

* Or for any of the Causes above-mentioned.

Suffex ss. **W** Hereas at our Meeting at L. on the Tenth Day of May last, for the better Execution of the Statutes concerning the Punishment of Rogues and Vagabonds, and other disorderly Persons, made in the Reign of the late King James the First, J. O. the Constable of the Parish of H. was fined in the Sum of 20 s. for not * appearing at the said Meeting before us, pursuant to a former Warrant to him directed for that Purpose : These are therefore in Her Majesty's Name to require you forthwith, upon Receipt hereof, to demand of the said J. O. the aforesaid Fine ; and if he shall refuse to pay the same, that then you levy the said Sum of 20 s. by Distress and Sale of his Goods and Chattels, rendring to him the Overplus ; and for your so doing, this shall be your Warrant. Given, &c.

R. B. W. N.

Constable : Indictments against him.

Being present at an Affray, and refusing to keep the Peace.

Fine and Imprisonment.

Jur', &c. quod die, &c. & Anno, &c. apud H. in Com' S. magna Affraia & perturbatio Pacis facta fuit per J. O. T. B. & multos alios Malefactores, & Pacis Dominae Reginae nunc Perturbatores, & quod T. B. de H. predict' in Com' predict' Yeoman, adunc Constabularius Villa de H. predict' Die, Anno, & Loco supradictus praesens fuit ad Affraiam predict' (or notitiam habuit, as the Case requires) & non conatus fuit ad pacificand' predict' Affraiam, & ad Pacem dictae Dom' Reginae conservand' nec ad arrestand' predict' J. O. T. B. & alios Perturbatores Pacis, sed debis' executionem Officii sui predict' in hac parte totaliter neglexit in maximum Contemptum dictae Dominae Reginae, ac contra Pacem, &c.

For not apprehending of a Felon.

Suff. ff. **J**ur. &c. quod cum J. S. de H. in Com. præd. Labourer, die, &c. Anno, &c. apud H. præd. in Com. præd. unam vaccam de bonis & catallis cujusdam G. E. felonice cepit & abduxit. Cumque etiam præd. G. E. die, &c. Anno, &c. apud L. in Com. præd. notitiam dedit J. O. de H. præd. Yeoman, adtunc Constabulario Villa de H. præd. quod præd. J. S. feloniam prædict. modo & forma præd. fecisset & perpetrasset, & quod idem J. S. adtunc fuit in præd. Villa de H. Et præd. G. E. adtunc & ibidem requisivit præd. Constabularium arrestare præfat. J. S. pro feloniam prædict. prædictus tamen J. O. adtunc existens Constabularius ejusdem Villa de H. die, &c. Anno, &c. apud H. præd. recusavit & neglexit arrestare præd. J. S. pro feloniam præd. in Contemptum dict. Dom. Regine, & contra debitum Officii sui prædict. & contra Pacem, &c.

Fine and Imprisonment.

The like Indictment may be against a Constable for refusing to search for stolen Goods.

For refusing to execute the Justices Warrant.

Suff. ff. **J**ur. &c. quod cum R. B. Armiger, unus Justiciarior. Domine Regine nunc ad Pacem in Com. S. conservand. assign. per præceptum suum manu & sigillo suis propriis signat. & sigillat. dat. primo die Julii, &c. An. &c. omnibus & singulis Constabulariis & aliis Officiariis dict. Dom. Reg. Com. S. præd. direct. mandavit eisdem Constabulariis & Officiariis & cuilibet eorum quod caperent aut eorum aliquis caperet J. O. (* Here recite the Warrant, which if it be to find Sureties, &c.) ad inveniend. Securitatem Pacis erga dict. Dom. Reginam & cunctum populum suum & præcipue erga R. N. quod quidem præceptum postea scilicet die, &c. Anno, &c. apud H. in Com. præd. deliberat. fuit J. O. adtunc Constabulario de H. præd. in forma juris exequend. prædict. tamen J. O. debitum suum in hac parte parvi pendens à prædict. primo die Julii Anno supradicto usque diem Captionis hujus inquisitionis apud Parochiam præd. in Com. præd. in executione Officii sui circa præmissa remisse & negligenter se habuit, & executionem præcepti præd. per tempus præd. totaliter negligit & contempnosc. recusavit contra debitum Officii sui in hac parte in Contemptum dict. Dom. Reg. nunc, & Legum suarum ad magnam retardationem Justitia, & contra Pacem, &c.

The Nature and Tenor of the Warrant must be set forth, or 'tis naught. 1 Vent. 305.

* For if the Tenor of the Warrant is not set forth, the Indictment will be quash'd. 1 Vent. 305.

Fine and Imprisonment.

For not raising Hue and Cry.

Jur', &c. quod die, &c. Anno, &c. apud H. in Com' S. quidam Malefactores ignoti in quendam R. N. Yeoman, vi & armis insulium fecerunt & quinque libras in pecuniis numeratis de denariis ipsius R. N. propriis ibidem invent' felonice ceperunt & asportaverunt super quo præd' R. N. instanter eodem Die & Anno supradictis venit ad Villam de B. in Com' præd' & tunc & ibidem notitiam dedit cuidam J. O. Constabulario Ville de B. præd' adtunc existen' quod præd' Malefactores feloniam præd' modo & forma præd' perpetrassent & adtunc & ibidem requisivit præd' J. O. hutesium & clamorem vers' præd' Malefactores recenter levare, & quod daret in mandatis inhabitantibus Villa de B. præd' ad prosequend' hujusmodi hutesium & clamorem prout de jure & per legem terre prosequi debeant præd' tamen J. O. debitam executionem Officii sui præd' in hac parte minime curans hujusmodi hutesium & clamorem non levavit nec mandavit inhabitantibus præd' nec eorum alicui recenter prosequi hujusmodi hutesium & clamorem, sed ad hoc faciend' tunc & ibidem totaliter recusavit & neglexit in malum exemplum aliorum Dom' Reg' Subitorum, & contra Pacem dict' Dom' Reg' nunc Coronam & Dignitates suas, & contra formam Statuti in hujusmodi casu edit' & provis'.

Fine and
Imprisonment.

Against those who refuse to follow the Hue and Cry, being commanded by the Constable.

Jur', &c. (as in the former Precedent to the Word levare, then write thus): Et super hoc præd' J. O. die & Anno supradictis apud B. præd' vers' præfat' Malefactores hutesium & clamorem levavit prout de jure debuit & adtunc & ibidem mandavit & appunctuavit T. P. de B. præd' Yeoman, & G. E. de eodem Agricolam hutesium & clamorem præd' prosequi præd' tamen T. P. & G. E. hutesium & clamorem præd' prosequi apud B. præd' die & Anno supradictis omnino recusaver' & neglexerunt in Contemptum dict' Dom' Regina, & contra Pacem suam, &c.

For an Escape.

Jur', &c. quod cum quidam J. O. nuper de H. in Com' præd' Agricola pro furatione Equi R. B. capt' & arrestat' fuit & postea scilicet 30 die Aprilis Anno, &c. apud H. præd' per H. P. Armig' unum Justiciar' dict' Dom' Reg' ad Pacem in Com' præd' conservand' Commissus fuit in custodiam R. N. adtunc Constabular' Villa de H. præd' ad Gaolam in Com' præd' conducend' & quod præd' R. N. adtunc & ibidem præfat' J. O. in custodia sua habuit pro feloniam præd' & postea præd' 30 die Aprilis Anno supradictis

Constable, &c. Coroners.

1973

prædicto apud H. præd. in Com. præd. ipsum J. O. à custodia ipsius R. N. voluntarie & felonice ad largum ire permisit contra Pacem dict. Dom. Reg. Coron. & Dignitates suas.

Against those who refuse to assist him to apprehend a Felon.

Jur. (as in the Precedent for not apprehending a Felon, to the Word *abduxit*) *Cumque etiam J. O. Constabularius Villa de H. præd. die, &c. Anno, &c. apud H. præd. mandavit & requisivit T. P. de H. præd. & G. B. de eodem Yeoman, ad auxiliand. ipsum J. O. ad tunc Constabular. de H. præd. existen. præd. (the Felon) pro feloniam præd. arrestare & capere præd. tamen T. P. & E. G. die & Anno supradictis apud H. prædict. hoc facere omnia recusaver. & quilibet eorum recusavit in Contemptum Dom. Reg. nunc & contra pacem, &c.*

Fine and Imprisonment.

The like may be for refusing to assist a Constable to convey Prisoners to the Gaol, or to bring them before a Justice of the Peace, &c.

For Negligence in his Office.

Jur. &c. *quod R. K. de H. in Com. præd. Yeoman, 30 die Aprilis, Anno, &c. Constabularius Villa de H. in Com. præd. ad tunc existens apud H. præd. in Com. negligenter in negotiis dict. Dom. Reg' ad Officium suum spectant. se gessit ac diversa præcepta & mandat. Justiciar. dict. Dom. Regine ad Pacem in Com. prædict. conservand. necnon ad diversas felonias transgression. & alia malefacta infra Com. prædict. perpetrat. audiend. & terminand. assignat. & ei direct. ad exequend. perimplere & exequi neglexit contra Pacem, &c.*

Contes, Vide Hunting.
Cozn, Vide Transportation,
and Hedge-breaking.

Coroners.

BY the Statute of *W. 1. cap. 10.* they were to be Knights; that is, they were to be Freeholders, and Men of Estates sufficient to qualifie them for this Office; for being chosen by the Freeholders of the County, 'tis they must answer the Fines, and other Duties imposed on the Coroners in Matters relating to their Office, if they are not of Ability to do it themselves:

Who ought to be a Coroner, and who not.

Godb. 105.
F.N.B. 163.
contra.

And therefore if he hath not sufficient Lands within the Hundred, a Writ may issue to chuse another; for in such Cases he ceases to be a Coroner, and need not be discharged formally by a Writ.

They must be Men who *melius sciant, ac possunt Officio intendere*; and therefore a blind, deaf, lame or sick Man, or who is *perpetuo languidus*, is not fit for this Office, and may be removed if chosen.

How cho-
sen, and
how ma-
ny in a
County.

By Vertue of a Writ *de Coronatore elegendo*, directed to the Sheriff, he is to be chosen by the Freeholders of the County, and the Sheriff after the Day of Election is to certify it, and the Name of the Person chosen, &c. F.N.B. 1633.

He is likewise to administer the Oath of his Office to him; as to the Number 'tis uncertain, but in most Counties there are generally Four Coroners.

And because he is elected by the Freeholders, his Office is not determined by the Demise of the King. 1 Levinz 120.

His Office
in relati-
on to the
Dead, and
the Wit-
nesses.
* 2 Levinz
141. 'tis
traversable.

He is to enquire *super visum Corporis*, how the Person was killed, and by whom, and what Goods and Chattels he had at the Time of the Fact committed.

If the Body cannot be found, then he has no Authority; but in such Case the Matter may be presented to the Justices in their Quarter-Sessions, and there found by the Jury; and this will intitle the Queen to a Forfeiture of the Goods. 1 Roll. Rep. 217. Nay 87. Poph. 209.

He must take the Depositions of Witnesses in Writing attested under their Hands, and may bind them over to the next Gaol-Delivery to give Evidence, &c.

If the Jury impannelled by him is sworn, and the Witnesses not ready, he may then adjourn them, and bind them by Recognizance to appear again.

When he hath Notice given to view the Body, he must make a Precept directed to the Constable where it lieth, to summon Twenty-four Men (who are to be of the Jury) to appear before him at a certain Day and Place, to execute such Things as shall be given to them in Charge.

If the Body is buried before he comes, the Vill must be amerced, and he may dig it up again; the Vill may be also amerced for neglecting to send for him, so that the Body is putrified to the Annoyance of the People.

He may find any Nuisance which occasioned the Death of a Man; as, that a Bridge is in Decay, and by Reason of a Breach, the Person fell in and was drowned, and the Town shall be amerced. Allen 51.

He

He is a judicial Officer, and therefore cannot make a Deputy; besides, by the Statute called * *Officium Coronatoris*, he is enjoined *Statim accedere ad occisos*, which implies, That he ought to execute his Office in Person; and therefore he ought to see the dead Body, and an Inquisition otherwise taken is void. *Stamf. Pl. Coron. 51.*

He being an Officer at the Common Law for the Administration of Justice, was to have no Fee for executing his Office; but by the Statute of 3 H. 7. he is impowered upon View of the Body to take 13 s. 4 d. of the Goods of the Slayer; if he has none, and is fled, then he may amerce the Town for suffering the Criminal to escape, and take that Fee out of the Amercement, but he cannot demand any Fee upon the View of a Person killed by Misfortune. 2 *Inst. 176.*

If he doth not come, having Notice of the Death of any Person, he may be fined and imprisoned by the Justices.

For not binding over Witnesses to the next Gaol-Delivery; for not certifying his Recognizances, and the Evidence and Inquisition taken before him, the Justices may fine him.

He is to take an Inquisition upon Flight of the Felon, to intitle the Queen to a Forfeiture. 5 *Rep. 109. B.*

But this must be within his proper Jurisdiction in the County; for if any Person be killed within the Verge of the Queen's Household, the Coroner there hath an exempt Power. 4 *Rep. 45.*

If there is any practice with him to suppress the Evidence for the Queen, B. R. may set aside the Inquisition upon a *male se gessu*; and if he omit or neglect to enquire, B. R. as Supreme Coroner may do it, or appoint Commissioners; but then it must be *super visum Corporis*, if done by Commissioners.

He ought to deliver his Inquisition at the next Gaol-Delivery, or to certifie it to B. R. where the Chief Justice is the Supreme Coroner; if he refuseth, he may be discharged of this Office, and fined by the Justices.

And therefore, where a Coroner did not return his Inquisition, it being found Murder, and the same Person being indicted at the next Gaol-Delivery, and the Jury found the Bill for Manslaughter, the Party came in and confessed the Indictment, and was bailed, and afterwards pleaded his Pardon, which was allowed; yet the Court made him plead to an Indictment upon the Coroner's Inquest, which he did, viz. *Auferfoit Convict*, and for this Neglect, the Coroner was fined.

He may find any Nuisance which occasioned the Death, &c. As if one riding over a Bridge fell into the River, and was drowned,

Depurp.

* 3 Ed. 1.

His fees.

How to be punished.

Inquisition, and Patters relating to it.

1 Vent. 182.

Allen, 51.

drowned, the Bridge being broken, or out of Repair, the Coroner may find it, and in such Case the Town shall be amerced; but it must likewise be found, that the Town is bound to repair it.

The Vill shall be amerced, if the Coroner doth not take an Inquisition *super visum Corporis*, because it shall be intended they did not give him Notice.

An Information was brought by the Master of the Crown-Office against the Debtor of a *Felo de se*, the Money being by that Means forfeited to the Queen; if the Substance of the Inquisition be not set forth in the Information, 'tis void 1 Sand. 275.

**Mellus
Inquit-
rend.**

1 Mod. 82.

3 Mod. 80.

238.

A *melius Inquirend'* is never granted after an Inquisition *super visum Corporis* is filed, unless it is quashed upon Oath made of a Misdemeanor in the Coroner or Jury, as that they did not go according to their Evidence.

And in some Cases it may go the Sheriff, as if the Coroner *super visum Corporis* find that the Man *fortuito* fell into a Pit, &c. yet there may go a *melius Inquirend'* to the Sheriff, to enquire of the Death, &c. and what Goods and Chattels he had at that Time.

1 Vent. 182.

Cro. Eliz.

371.

By the Statute of 4 Ed. 1. the Inquisition should be taken *super sacrum. &c. hominum Villarum prox. adjacen.* but it was *per sacrum. &c. proborum & legalium hominum de Parochia, &c.* yet it was held good. Sid. 204. Latch. 166.

Matters of Form may be amended, as *seipsum felonice submersus fuit*; it should be *jecit seipsum in aquam, & ibidem seipsum merfit.* Sid. 259.

**Return-
ing of a
Process.**

If he return *fugam fecit*, 'tis not traversable; but if he find the Person *Felo de se*, it may be traversed. 2 Levinz 152. 1 Vent. 278, 352.

He is a Ministerial as well as a Judicial Officer; and therefore where an Exception is to the Sheriff, *viz.* That he is of Kin, or Tenant to the Party, or where 'tis at his own Suit, or if any Default is in him by Partiality, or otherwise, in making the Pannel; in either of these or like Cases, the Coroner shall return the Process.

But then if the Original Process is directed to him, all other Process in the same Suit must be so likewise, tho' another and more indifferent Sheriff be appointed whilst that Suit is depending.

And if such Process is directed *Cornatoribus*, it hath been held, Two may return it, tho' there are more in the County, but one cannot, for in this Case they are but as one Officer; and therefore if one arrest a Debtor, and he escapes, the Action shall be brought against both. 3 Levinz 399.

An Inquisition for Murder *super visum Corporis.*

Suffex ff. **I**nquisitio indentat. cap. apud L. in Com. præd. coram me W. V. an. Coronator Dom. Regin. pro Com. præd. die Veneris 30 die Aprilis, Anno, &c. super visum Corporis T. B. apud L. præd. Felonice interfecit. adtunc & ibid. mortui jacen. super sacrum. proborum & legalium hominum ville de L. præd. & trium aliarum villarum proquinarum, viz. Barcomb, Ringmere & Malling prout moris est ad inquirend' qualiter & quomodo præd. T. R. ad mortem suam devenit, viz. super sacrum. (of the Jury) qui dicunt super sacrum. suum quod præd. T. B. die Anno & loco supradict. circa horam primam post meridiem præd. die veneris fuit in pace Dei & dict. Dom. Regin. nunc apud L. præd. & adtunc & ibidem venit W. S. nuper de L. præd. gen. Felonice & ut felo dict. Dom. Regin. nunc & ex malitia sua præmedit. die Anno hora & loco supradict. in præd. T. R. in Com. præd. insultum fecit & eundem T. R. cum quodam Gladio pretii duorum solidorum quem idem W. S. adtunc & ibid. in manu sua dextra tenuit super dextram partem pectoris percussit & pupugit & plagam mortalem eidem T. R. dedit de qua quidam plaga præfat. T. R. instanter obiit & sic præd. W. S. præfat. T. R. adtunc & ibidem Felonice interfecit & murderavit contra pacem dict. Dom. Reg. Coronam & Dignitat. suas & alterius Jur. præd. super sacrum. suum præd. dicunt quod R. S. de A. præd. J. O. de, &c. tempore Felonia & murderi præd. in forma præd. fact. scil. die veneris præd. 30 die Aprilis, Anno, &c. apud L. præd. in Com. præd. circa horam primam post meridiem ejusdem diei Felonice fuerunt presentes cum gladiis strictis & adtunc & ibidem auxilantes confortantur & manutenuen. præfat. W. S. ad feloniam & murderum præd. in forma præd. faciend. & perpetrand. contra pacem dictæ Dom. Reg. Coron. & Dignitat. suas. Ac insuper Jur. præd. super sacrum. suum præd. dicunt quod præfat. R. S. & J. O. non habuerunt nec eorum aliquis habuit ulla bona seu catalla terras vel tenemen. ad eorum notitiam in Com. præd. tempore felonie & murderi præd. fact. In cujus rei testimonium, &c.

Upon one who hath hang'd himself.

Middl. ff. **I**nquisitio, &c. (as before) circa horam primam post meridiem ejusdem diei Deum præ oculis suis non habens sed instigatione Diabolica motus & seductus in quodam pomario cujusdam R. B. Gen. apud H. præd. in Com. præd. adtunc & ibid. solus existens quendam funem pretii unius denarii ipse idem W. R. adtunc & ibidem in manibus suis tenuit & unum finem inde circa ramum cujusdam fraxini ibid. ligavit & sic seipsum adtunc & ibid. cum fune præd. voluntarie & felonice suspendebat suffocabat & strangulabat,

gubabat, & sic Jur' præd' super sacrum. suum præd' dicunt quod præd' W. R. modo & forma præd' voluntarie felonice & ut felo de se murdravit seipsum contra pacem dictæ Dom' Reg' nunc, &c. & quod idem W. R. nulla habuit bona seu catalla terras neque tenementa in Com' præd' ad eorum notitiam. In cuius rei Testimonium, &c.

If by drowning; then say,

* If it had
been Emer-
git, 'tis
naught.
2 Lev. 141.
3 Mod. 100.

IN quodam Flumine (or as the Case is) ibidem vocat', &c. seipsum voluntarie & felonice * merfit & sic, &c.

Upon One non compos Mentis.

INquisitio, &c. qui dicunt super sacrum. suum præd' quod præd' R. N. die & Anno supradictæ & diu antea, scil' a primo die Aprilis, Anno, &c. usq; ad dictum diem existens Lunaticus & non compos Mentis solus venit ad quendam pontem vocat', &c. & adtunc & ibid' seipsum a ponte præd' in aquam projecit & voluntarie & felonice seipsum merfit & sic, &c.

Upon one who died in Prison.

INquisitio, &c. qui dicunt super sacrum. suum quod præd' W. B. qui antea commissus fuit ad gaolam per T. P. Baronet' pro suspitione cuiusdam felonie per præfat' W. B. perpetrat' in dicta gaola die & Anno supradictis ex visitatione Dei obiit & sic Jur' præd' super sacrum. suum dicunt quod præd' W. B. ad mortem suam modo & forma præd' devenit, & non aliter. In cuius rei Testimonium, &c.

Upon One who was murdered in a Robbery.

INquisitio, &c. qui dicunt super sacrum. suum quod die Veneris 30 die Aprilis, Anno, &c. sic accidit, quod quidam ignotus Deum præ Oculis non habens sed instigatione Diabolica motus & seduct' vi & armis, viz. gladiis & pugionibus inter horas quintam & sextam ante meridiem ejusdem diei apud H. præd' in Com' præd' in alia via Regia in & super præfat' R. N. adtunc & ibid' in pace Dei & dictæ Dom' Reg' existens insultum fecit & præd' ignotus cum quodam gladio pretii duorum solidorum quem ipse in manu sua adtunc & ibidem tenuit præd' R. N. super dextram partem ventris sui adtunc & ibidem felonice percussit & eidem R. N. adtunc & ibidem cum gladio præd' unam plagam mortalem profunditatis quatuor pollicum & latitudinis unius pollicis dedit de qua quidam plaga mortali præd' R. N. adtunc & ibidem instanter obiit & sic Jur' præd' super sacrum. suum præd' dicunt quod præd' ignotus apud H. præd' in Com' præd'

modo & forma præd' præfat' R. N. Felonice interfecit & murtheravit
contra pacem, &c. & ulterius Jur' præd' super sacrum. suum præd'
dicunt quod præd' ignotum postquam ipse feloniam & murtherum præd'
sic in forma præd' perpetrasset fugam fecit contra pacem, &c.

On an Infant murdered, super visum Corporis.

Middl. ff. **I**nquisitio, &c. cap't, &c. coram me R. R. Gen' uno Co-
ronator' dictæ Dom' Reg' in Com' præd' super visum
Corporis cujusdam Infantis Masculi de Corpore A. B. nuper de H. in
Com' præd' nat' ibidem mortui jacen' per sacrum. (of the Jury)
qui dicunt super sacrum. suum præd' quod præfat' A. B. Deum præ
Oculis suis non habens sed instigatione Diaboli mota & seducta die
Venris, &c. Anna, &c. apud H. in Com' præd' in & super infantem
masculum præd' adtunc & ibidem in pace Dei & dictæ Dom' Reg'
inisen' insultum fecit & præd' A. B. cum manibus suis præd' Infan-
tem felonice voluntarie & ex malitia sua præcogitata suffocavit &
strangularit de qua quidem suffocatione & strangulatione præd' In-
fanti apud H. præd' in Com' præd' instanter obiit & sic, &c.

Cottages.

'TIS a House erected since the Statute, not having Four
Acres of Land in Fee-simple or in Tail laid to it, and
near it, and which is usually occupied with it.

What it
is.
31 Eliz. c. 7.

If a Cottage was built before the Stat. of 31 Eliz. and after-
wards converted into two Dwelling-houses without Four
Acres of Land, both are Cottages.

If a new House is built since the Statute upon an old
Foundation before, 'tis a Cottage.

If the Land is sold from the House, or that from the Land,
'tis a Cottage.

But if a new House be built upon an old Foundation be-
fore the Statute, 'tis no Cottage.

No Cot-
tage.

By Order of Justices at Sessions, but this must be with
leave of the Lord of the Manor; but if the Lord will not
give Leave, Sessions alone may tolerate for a particular
time.

How it
may be to-
lerated.

Major Part of Church-wardens and Overseers of the Poor,
with leave of the Lord, in Writing under Hand and Seal, may
set up a Cottage upon the Waste, at the Charge of the Parish,
for poor and impotent Persons; this must be confirmed by
the Sessions. 43 Eliz. cap. 2.

Not

To what
Houses the
4 Acres do
not ex-
tend.

Not to Houses in Cities or Towns-Corporate, Boroughs, or Market-Towns.

To no Houses of Labourers in Mines, nor to Houses of Brick and Tile-makers and Lime-burners, so as such Houses be within a Mile of their Work.

To no Houses within a Mile of the Sea, or on the Side of a River (where the Admiral hath Jurisdiction) if a Sailor, or he who furnishes Ships with Victuals, liveth therein.

To no Houses in Forrests, Chases, Warrens, or Parks, so long as Keepers live therein.

Punish-
ment for a
Cottager,
nor having
4 Acres.

Cottage, when built, cannot be pulled down; but the Builder, or he who converts a House built to a Cottage, forfeits 10*l.* to the Queen.

He who upholds and maintains such a House, forfeits to the Queen 40*s.* per Month.

Inmates.

Whether a Cottage hath Four Acres or not; whether 'tis in City or Borough; there must be no Inmates, under Penalty of 10*s.* per Month, which the Owner or Occupier of the Cottage must pay to the Lord of the Leet.

In this Matter, the Lord, &c. the Justices of Assize, and the Justices in the Sessions, have a concurrent Power to hear and determine; but the first Enquiry must stand.

Penalty
of 10*s.* per
Month,
how to be
recovered.

It may be presented by the Jury upon their own Knowledge, or an Indictment may be found by them; in either of these Cases the Lord hath a Title, or may distrain, as to bring an Action of Debt for the Forfeiture, or to levy it by a *Fieri facias* directed by his Steward to the Bailiff of the Manor. *Co. Ent.* 666.

Indictments concerning Cottages.

2 Rol. Rep.
38.
Sid. 359.

FOR erecting of a Cottage, must conclude *Contra formam Statuti.*

Must likewise conclude *contra pacem*, or otherwise may be quashed; if it be for erecting *unum Mesuagium pro Habitatione* and not laying four Acres of Land, 'tis good, tho' he doth not say it is inhabited. *Roll. Ab.* 2 Part 80.

1 Mod. 295.

It was formerly held to the contrary, because the very Building was an Offence. 2 *Bull.* 264. but the latter Authorities are otherwise, for it must be shew'd, that the Building was *pro Habitatione*, those being the very Words of the Statute which creates the Offence. 1 *Vent.* 107.

The Sessions licensed J. O. to build a Cottage, and R. N. was indicted for refusing to perform this Order; but it was quash'd, because it did not set forth when, nor before what Justice he is refused.

Indictment for erecting and continuing of a Cottage Five Years past, and not laying Four Acres of Land, according to the Statute *De terris mensurandis*; quashed for not saying, that *voluntarie* he did continue it. Secondly, For not prosecuting within two Years. Thirdly, For alledging the Ordinance of 33 Ed. 1. to be a Statute, 2 Cro. 603. *tamen quare* for the very erecting is an Offence within the Statute.

Indictment for erecting, &c. & *ulterius*, for continuing *contra formam Statut.* this Conclusion goes to the last Offence only, and therefore quash'd. 4 Mod. 345.

Indictments concerning Inmates.

There cannot be a joint Indictment against several, it must be several against every Person who suffers Inmates in their Houses. 2 Roll. Rep. 164.

For building a Cottage.

Middl. ff. Jur', &c. quod T. P. de H. in Com' præd' scilicet. 30 die Aprilis, Anno Regni, &c. apud H. præd' in Com' præd' quoddam Cotagium pro habitatione erexit & adsunc & ibidem per spatium decem mensium & amplius dict' Cotagium sic erect' pro habitatione voluntarie sustinuit continuavit & manserunt ubi reversus quatuor acra terre mensurand' secundum formam Statut' de libertenemento suo cum dicto Cotagio continue occupand' nunquam fuerunt adiect' vel assignat' contra formam Statut' in hujusmodi casu dict' & provis' necnon contra pacem, &c.

For suffering Inmates against the Occupier of a House.

Jur', &c. quod J. O. nuper de Paroch' de H. in Com' S. præd' Husbandman, primo die Septembris, Anno Regni, &c. eussen' Occupator cujusdam Domus apud paroch' præd' in Com' præd' dictam domum in quatuor sepeal' tenementa pro inhabitatione aliorum hominum adtunc & ibidem divisit & convertit & quod præd' J. O. sepeal' subtenentes cum Familiis suis in dictis tenementis sic ut presertur per ipsum divisit & convers' ibidem cohabitare voluntarie locavit, dictosque sepeal' subtenen' cum familiis præd' a dicto primo die Septembris, Anno supradict' per spatium decem mensium tunc prox' sequen' in dictis tenementis cohabitare & commorari permisit in magnum periculum inficien' habitantium ibidem malis contagiis & ad depauperationem parochianorum parochie præd' & ad onerand' parochiam præd' cum multis pauperibus ad commune nocumentum omnium ligoorum & subditorum dictæ Dom' Reg' ibidem commoran' necnon contra pacem dictæ

Cottages.

dictæ Dom. Reg. coron. & dignitatem suas ac contra formam Statuti. in hujusmodi casu edit. & provis.

For converting of an House into a Cottage, and for continuing of it.

Jur', &c. quod 4 die Julii, Anno, &c. quidam T. P. de H. in Com' S. scissor. occidentalem partem ejusdam domus mansionalis ipsius T. P. tunc & adhuc existen. in H. præd. in Com. præd. viz. unam aulam & duas Cameras convertit in Cotagium pro Habitatione, (If the House be new built, then say) Erexit edificium ad vel in Cotagium pro Habitatione ut quidam S. P. de H. præd. in Com' præd. Labourer, eadem occidentali parte dictæ Domus pro Habitatione sua uteretur qui quidem S. P. dictum Cotagium modo inhabitat. ubi re vera præd' T. P. nunquam adjecit vel assignavit dicto Cotagio quatuor Acres Terræ secundum ordinationem de Terris mensurandis computandas de libero tenemento ipsius T. P. vel de hereditate sua prope dictum Cotagium jacentes adeo ut cum dicto Cotagio continue occupat. essent. quamdiu præd' Cotagium inhabitat. erit in magnum dictæ Dom. Reg. contemptum ac contra pacem, &c. & contra formam Statuti in hujusmodi casu edit. & provis. Et ulterius presentant quod præd' T. P. quoddam Cotagium sic ut præfertur conversum pro habitatione a dicto quarto die Julii, Anno supradicto usque ad quartum diem Mensis Maii tunc prox. sequen. apud H. præd' volentarie sustinuit manutenuit & continuavit in magnum dictæ Dom' Reg' contemptum ac contra pacem, &c. & contra formam Statuti, &c.

Cotton, See Wool, and working thereon.

County-Court.

Sheriff. Under-Sheriff, or Sheriff's Clerk, entring Plain in County-Court, in Absence of the Plaintiff or his Attorney, or above one Plaint in one Cause, they or the Plaintiff may be examined by a Justice of Peace, and he shall certify that Examination three Months afterwards into the Exchequer, and the Offender must pay 40s. to the Queen and Prosecutor.

Sheriff shall issue Eſtreats out of County-Court, two Justices (*Quorum unus*) shall view them, and there must be two Parts indented and sealed by the two Justices and Sheriff, and one of them must remain with the Sheriff. 11 Hen. 7. cap. 1.

Counterfeits.

TIS an Offence at Common Law, and 'tis likewise enact-
ed, That getting Money or Goods falsly and deceitful-
ly by Counterfeit-Letters, &c. and being convicted thereof
at Quarter-Sessions, shall suffer any corporal Punishment, ex-
cept Death.

Two Justices (*Quorum unus*) may bind the suspected Per-
son to appear at the next Sessions, or bail them till that Time,
&c. or may commit him at their Discretions. 33 H. 8. cap. 1.

Anno 15 Car. one Terry got a Wedge of Silver, Value 200 l.
by a false Note, in the Name of another, and being convic-
ted, he had Sentence to stand in the Pillory, and was fined
500 l. and committed during Pleasure; tho' my * Lord Coke
tells us, That a Man cannot be *fined* upon the Statute for
this Offence, because the Law directs only a corporal Pu-
nishment.

At another Time, one Hubert of Norfolk procured *Webster*
to personate A. B. who was then beyond Sea, and in his Name
to acknowledge a *Fine* of his Lands, for which he was fined
and imprisoned, and the *Fine* levied was made void. But now
by 21 Jac. cap. 26. this is made Felony.

Cro. Car.
564.

*3 Inst. 133.

Cro. Eliz.
530. 12 Rep.
123. Moor
630.

Indictment for Counterfeiting of a Letter, &c.

Suffex ff. **I**Ur', &c. quod quidam J. O. nuper de H. in Com. S. Treo-
man, primo die Maii, Anno Reg. &c. apud L. in Com.
præd. quasdam falsas & contrafactas literas in nomine R. B. de H.
præd. in Com. præd. Ar. cuidam T. P. adtunc tenen. præd. R. B.
(or, as the Case is) directas falso & deceptivè fecit imaginari, suis
& devisavit posteaq; scil. eodem primo die Maii, Anno supradicti
idem J. O. præd. falsas & contrafactas literas prefato T. P. falso &
deceptivè apud L. præd. in Com. præd. dedit & deliberavit colore &
ratione quarum quidem falsarum & contrafactur. literar. præd. sic ut
presertur dicto T. P. adtunc & ibidem deliberat. præd. J. O. eodem
primo die Maii, Anno supradicti. apud L. præd. in Com. præd. viginti
libras bone & legalis monete Angl' de domariis præd. R. B. in ma-
nu & possessionem ipsius J. O. & ad usum suum proprium falso &
deceptivè obtinuit & acquirebat ad grave dampnum ipsius R. B. in
nolum exemplum aliorum in consimili casu delinquentium & contra
normam Statuti in hujusmodi casu edit. & provis.

Custom,

Custom, and Custom-house Officers.

Resisting, hindring, affronting or abusing; or wounding Officers or Deputies, shall be committed by the next Justice till next Quarter-Sessions; to be fined, not exceeding 100 *l.* and to remain in Prison till discharged by Order of the *Exchequer*, or till he discover who set him on Work. 13 & 14 *Car. 2. cap. 11.*

One Justice, by Oath of two Witnesses, may commit any Person assisting in the Landing or Shipping prohibited Goods, or for which any Duty is payable, if such Person have no Warrant; or if no Officer be present, there to remain till he find Sureties for his good Behaviour, and till he be discharged by the Lord Treasurer, &c.

For second Offence, Commitment for two Months, or till he pay 5 *l.* to the Sheriff, for the Use of the Queen; or till he be discharged by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the *Exchequer*.

A Warrant against those who abuse or resist a Custom-house Officer, and a *Mittimus* to send the Offender to Gaol.

To the Constable, &c. of H. in the County of Suffex, and to the Keeper of the Common Gaol there.

Suffex ss. **W**Hereas Complaint hath been made unto me by *T. P. of H. &c.* being an Officer of Her Majesty's Customs, That *J. O. and T. B. of H. afore said, Yeomen*, did lately, with Force and Arms, resist the said *T. P.* at *L.* in your County, being then in the Execution of his said Office: These are therefore in Her Majesty's Name, to command you the Constable of, &c. to apprehend the said *J. O. and T. B.* and to deliver them to the Keeper of the Common Gaol in the said County, together with this Warrant; hereby also commanding you the said Keeper to take into your Custody the said *J. O. and T. B.* and them safely to keep until the next Quarter-Sessions which shall be held for the same, there to be punished according to the Statute in that Case made and provided. And hereof fail not at your Perils: Given under my Hand and Seal, &c.

R. B.

A Warrant against an Offender assisting in the Landing Goods, and carrying them away without paying Custom.

To the Constable and Tything-men of H. in the County of S. and to either of them.

Suffex ff **W**Hereas Complaint hath been made unto me, That J. O. of &c. hath lately assisted in the landing and carrying away several Goods at L. in the said County, for which a certain Duty was due and payable to Her Majesty, which was not paid; and whereas it appeareth to me, upon the Examination of, &c. and others, That he the said J. O. had not any Warrant for his so doing, and that he had not given Notice thereof to any Officer of the Customs, and that no such Officer was there present: These are therefore in Her Majesty's Name to command you to apprehend the said J. O. and to bring him before me, or some other Justice of the Peace for their County, to answer the Premises: And hereof fail not. Given under my Hand and Seal, &c.

Two Witnesses.

Commitment for the First Offence.

To the Constable of, &c. and to the Keeper of the Common Gaol of the County of Suffex.

Suffex ff **W**Hereas it hath been duly proved before me, That J. O. of, &c. hath (as in the former Warrant): These are therefore in Her Majesty's Name to command you the said Constable to convey the said J. O. to the Common Gaol, and to deliver him to the Keeper thereof, together with this Warrant, hereby also requiring you the said Keeper to take the said J. O. into your Custody, and him safely to keep, until he shall find Sureties for his Good Behaviour, and until he shall be discharged from the same by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the Exchequer: And hereof fail not at your Perils. Given, &c.

13 & 14
Car. 2. c. 11.
One Justice,
Two Witnesses.

Commitment for the Second Offence.

Suffex ff **W**Hereas (as in the former Warrant): And whereas the said J. O. hath been already duly convicted before this Time for the said Offence, and hath since his said Conviction offended in the like Kind: These
P are

One Justice, Two Witnesses.

Custom, and Custom-house Officers.

are therefore in Her Majesty's Name, (as in the former Warrant;) and him safely to keep for the Space of two Months without Bail or Mainprife; or until he shall pay unto the Sheriff of the said County the Sum of 5 l. for the Use of Her said Majesty; or until he shall be from thence discharged by the Lord Treasurer, Chancellor, or Under-Treasurer, or Court of Exchequer: And hereof fail not. Given, &c.

Cut-work, See Bone-Lace.

Cutting out Tongues, &c.

BEfore the Statute of 5 H. 4. it was not Felony to cut out the Tongue, or put out the Eyes of any one; and therefore when Men were beaten, wounded and robbed, it was usual to put out their Eyes, or cut their Tongues, that the Offenders might not be accused.

5 H. 4. c. 5.

This Mischief is prevented by that Statute, by making it Felony: And my Lord Coke tells us, That from the Time of the making of this Law, for above the Space of Two hundred Years, he could not find more than one Person indicted upon this Act.

37 H. 8. c. 6.

But notwithstanding this Law, cutting off Ears was not Felony; for by the Statute of 37 H. 8. it was no greater Offence to cut off the Ear of a Man than to cut out the Tongue of any living Beast; for in both Cases the Offender is to forfeit 10 l. to the Queen, and treble Damages to the Person grieved.

It was a Question after these Laws, and before the Statute of 22 Car. 2. Whether cutting off the Privy Members, tho' the Man should be taken in Adultery, was Felony or not? For by *Bracton*'tis said, That in such Case, *Sequitur pena aliquando capitalis*; and yet I find, that Anno 13 H. 3. one John a Monk was taken by Henry Hull in the Act with his Wife, and he cut off the Privy Members of the Monk, and was only indicted for a Mayhem. 3 Inst. 118.

22 & 23
Car. 2.

But now by the Statute of 22 Car. 2. cutting out an Eye, flitting of the Nose, or cutting it off, or the Lip, or cutting off or disabling any Limb or Member, with an Intention to maim or disfigure the Person, 'is made Felony without Benefit of Clergy, in the Actor, Counsellor, Aider or Abettor, being privy to the Offence.

One Stapleton was lately convicted at the Sessions in the Old Bailey upon this Act, for putting out the Eye of one Russell, by flinging Mercury in his Face; afterwards in *Hillory*, 1 Jac. he pleaded his Pardon.

Indict-

Cutting out Tongues, &c.

211

Indictment for putting out Eyes.

Sufflex ff JUR. &c. quod J. O. de H. in Com. præd. Yeoman, 23 die Julii, Anno Regni, &c. in quodam loco apud H. præd. in Com. præd. (vocat. the Wallyns) vi & armis in quendam T. P. de H. præd. in Com. præd. Yeoman, in pace diſt. Domina Regin' tunc ibidem exiſten. inſultum fecit, & adtunc & ibidem ex malitia ſua præcogitata * cum quodam baculo quod ipſe idem J. O. in manu ſua dextra adtunc tenuit pretii unius denarii oculos ipſius T. P. felonice affodit & eruit contra pacem diſt. Dom. Reg. Coronam & Dignitatem ſuat, & contra formam Statut. in hujusmodi caſu edit. & proviſ.

5 H. 4 c. 5.

* Or digiti & ungui- bus, as the Caſe requireth.

Indictment for cutting out a Tongue.

Sufflex ff JUR. &c. quod R. N. nuper de, &c. 30 die Aprilis, Anno, &c. vi & armis in & ſuper quendam T. P. adtunc & ibidem in pace Dei & diſt. Dom. Regin. exiſten. apud L. in Com. præd. inſultum fecit & ipſum verberavit, vulneravit ac quodam cultello quem præd R. N. adtunc in manu ſua dextra tenuit pretii 6 d. linguam ipſius T. P. adtunc & ibidem felonice eruit & amputavit contra pacem Dom. Regin. nunc & contra formam Statuti prædicti.

Deer-stealing.

THE Statutes which relate to this Head, are, viz. 13 R. 2. cap. 13. That a Layman not having 40 s. per Ann. or a Clerk not having 10 l. per Ann. ſhall not keep a Dog to deſtroy any Deer: The Punishment is Imprisonment for a Year.

The next Statute is 5 Eliz. cap. 21. Entering any Park to kill or chaſe Deer without Licence of the Owner, muſt ſuffer three Months Imprisonment, and be bound to Good Behaviour for ſeven Years.

But the Party grieved might in Sessions releaſe the Good Behaviour; and might likewise in Sessions reckon treble Damages.

Theſe Laws were ineffectual to ſuppreſs Offences of this Nature, and therefore Anno 3 Jac. cap. 13. a Statute was made, That if any Man ſhould be convicted in the Sessions of unlawful chaſing or killing any Deer, he ſhould pay treble * Damages to the Party grieved (or by the Statute of 7 Jac. cap. 13. the Party might at his Choice take 10 l.) ſuffer three Months

Months expired, and by the Juſtices.

* Theſe were to be aſſeſſed after three

* The Party being satisfied, the Justices in Sessions might release the Good Behaviour.

Imprisonment, and afterwards to remain in Prison till he found * Sureties for his Good Behaviour for Seven Years.

This Statute seems to extend only to the *chasing* and *killing* in Parks and enclosed Grounds, &c. and no Reward for an Informer; and therefore *Anno 13 Car. 2. cap. 10.* another Statute was made, *viz.* That not only *courseing* and *killing*, but *huxting* or *taking* away Deer in any Ground where Deer are kept, the Forfeiture is 20 *l.* one Moiety to the Informer, the other to the Owner of the Deer.

The Offence must be against the Consent of the Owner, or the Person intrusted to keep the Deer, the Prosecution must be within six Months after the Offence; the Conviction must be before one Justice of the Peace by Confession, or Oath of one Witness, and the Penalty is to be levied by Warrant from that Justice before whom the Offender was convicted, by Distress, &c. and if that could not be taken, then he might be committed to the House of Correction for six Months, or the common Gaol for a Year, and not to be discharged till Security be given for Good Behaviour for one Year after his Enlargement.

Those who are aiding or assisting, incur the same Punishment.

But the Penalty of 20 *l.* was found by Experience too little to deter Offenders of this Nature; for they might kill and wound many Deer at the same Time, and yet forfeit no more; therefore, *Anno 3 & 4 W. & M.* another Statute was made, *viz.* That for *courseing* and *hunting*, the Offender forfeits 20 *l.* and for *taking in Toils, killing and wounding any Deer*, forfeits 30 *l.* for every Deer, one Third Part to the Informer, the other to the Poor of the Parish where the Offence is committed, the other to the Owner of the Deer.

The Prosecution must be within a Year after the Offence; the Conviction before one Justice of the County where it was done, or the Party taken; it must be by Confession or Oath of one Witness: The Penalty is to be levied by Distress or by Warrant of that Justice before whom the Offender was convicted; and if no Distress can be found, then the Party may be committed for a Year, and stand in the Pillory one Hour on a Market-day in a Town next adjoining to the Place where the Offence was done.

A Constable, &c. may by Warrant from one Justice enter and search the Houses of suspected Persons, and if he find any Venison, or Skins of Deer, or Toils, shall carry the Person before a Justice, and if he do not give a good Account how he came by them, and produce the Party of whom bought, or prove the Sale upon Oath, he shall be convicted of the Offence, and be subject to the Penalties for killing Deer.

If the Offender do not pay down the Money upon the Conviction, the Constable may detain him till a Return be made of the Warrant for Distraining, but he cannot keep him in Custody above two Days.

Before *Certiorari* shall be allowed to remove a Conviction or other Proceedings, the Party convicted shall enter into a Bond of 50 *l.* to the Prosecutor, with Sureties to be approved by the said Justice, to pay full Costs upon Oath, within a Month after the Conviction is confirmed, or a *Procedendo* granted.

The Defendant was convicted at the Sessions, and fined for Deer-stealing; and a Writ of Error was brought in B. R. and the Court was moved, that the Offender might be bailed till the Errors should be determined; but it was denied, because he was in Execution for a Fine. *Sid.* 286.

*Punishment of those who keep Guns and Engines
to kill Deer.*

BY the Statute of 19 H. 7. *cap.* 11. none shall keep Deer-hays, or Buck-stalls, nor shall stalk with Bush any Deer, except in his own Park, under Penalty of Forty Shillings per Month for keeping such Deer-hays, &c. and 10 *l.* for Stalking.

Two Justices in Sessions may examine the Offender, and commit him till he pay the Forfeiture, of which the Justices are to have the Tenth Part.

By the Statute of 3 Jac. 1. c. 13. he that keeps a Gun to kill Deer, not having 40 *s.* per Ann. in Lands, or 200 *l.* in Goods, any Person having 100 *l.* per Ann. may take away the Gun and keep it.

**An Indictment for chasing a Buck in the
Queen's Forrest.**

Midd. ff. **JUR.** &c. quod J. O. de H. in Com. præd. Yeoman
& T. P. de eodem Yeoman, 27 die Octobris Anno
Regni, &c. Forestum dict. Dom. Regine de L. in Com. prædict. fre-
gerunt & intraverunt & unam Damam, (Anglice vocat. a Buck)
ad valenciam trium librarum adtunc & ibidem invent. sine licentia
& contra voluntatem dict. Dom. Regine cum Canibus Leporariis (vo-
cat. Greyhounds) venati sunt, & fugaverunt & dictam Damam
apud W. infra prædict. Foresta præd. cum Funibus (Anglice, Wares)
suspendider. & occiderunt, & sic suspensam & occisam illicite ce-
perunt & asportaverunt contra pacem dict. Dom. Regine nunc Coron.
& dignitates suas, &c.

Deer-stealing.

A Warrant against a Person for stealing Deer: (Or as the Fact is.)

To the Constable of the Parish of H. &c.

38c 4 W.
& M. one
Justice.

For every
Deer
wounded,
30%.

Suffex ff. **W**Hereas it hath been duly proved before me, That J. O. of H. in the County aforesaid, did on the Tenth Day of *October* last past unlawfully *course* (or as the Fact is) one Fallow Deer in the Park of J. S. of, &c. without his Consent, or of the Person intrusted with the keeping thereof, contrary to the Statute in that Case made and provided: These are therefore in Her Majesty's Name to require you to levy by Distress and Sale of the Goods of the said J. O. the Sum of 20 l. which said Sum is forfeited by him, being convicted before me for the said Offence; and that you pay one Third Part thereof to T. P. who informed me of the said Offence so committed and done by the aforesaid J. O. and another Third Part unto the Churchwardens or Overseers of the Poor of the Parish of P. where the said Offence was committed for the Use of the Poor of the said Parish; and the other Third Part thereof to J. S. the Owner of the said Deer; and if no Distress can be found and taken, that then you certifie the same forthwith to me. Given under my Hand and Seal, &c.

The like Warrant *mutatis mutandis*, for Assisting or Aiding, &c.

Commitment for want of Distress.

To the Constable of, &c. and to the Keeper of the Gaol of S. &c. and to the Chief Officers of the Town of L. in the County aforesaid, for the Time being.

Suffex ff. **W**Hereas you the said Constable, &c. were lately required by Warrant under my Hand and Seal to levy the Sum of 20 l. by Distress and Sale of the Goods of J. O. of H. &c. by him forfeited, for an Offence which he committed against the Form of the Statute made in the Third and Fourth Years of the late K. William and Q. Mary, Entitled, *An Act*, &c. And whereas I have been certified by you, That you cannot find a sufficient Distress to be taken of the Goods and Chattels of the said J. O. for the Offence aforesaid: These are therefore in Her Majesty's Name to require you to apprehend the said J. O. and to convey him safely

to the Gaol of the said County, and deliver him to the Keeper thereof, together with this my Warrant for your so doing; requiring also you the aforesaid Keeper to take into your Custody the said J. O. and him safely to keep for the Space of one whole Year next ensuing, and that you then deliver him to the Chief Officer of L. being the Town next adjoining to the Place where the Offence was committed, or some of his Under-Officers, together with this Precept, who are hereby required to set the said J. O. in the Pillory in the said Town on some Market-day, for the Space of one Hour: And hereof fail not, as you will severally answer the contrary at your respective Perils. Given under my Hand and Seal, &c.

An Indictment for hunting and taking Deer.

Midd. ff. JUR, &c. quod J. O. de H. in Com' prædict' Yeoman, 27 die Junii, Anno Regni, &c. circa horam duodecimam in nocte ejusdem diei aggregatis sibi diversis aliis Malefactoribus & Pacis Dom' Reg' Perturbatoribus ignotis vi & armis videlicet baculis, ferro, munitis pugionibus & cultellis & aliis armis Clausum & Parcum cujusdam J. S. Armig' apud B. in Com' prædict' illicite frugerunt & intraverunt & Damas ipsius J. S. adtunc & ibidem depascentes & cubantes in Parco prædict' cum duobus Canibus Leporariis (Anglice, Greyhounds) venatus est, & cum rete vocat' a Buckstall quod prædict' J. O. in Parco prædict' adtunc habuit & Canibus prædict' duas Damas adtunc & ibidem cepit occidit & asportavit contra Pacem, &c. ad grave damnum ipsius J. S. & contra firmam Statuti, &c.

A Warrant against one who hath killed or wounded, and taken away, a Deer.

To the Constable of, &c.

Suffex ff. WHEREAS Complaint hath been made unto me, That J. O. of, &c. did lately unlawfully kill and wound several Deer in the Park of, &c. These are therefore to charge you forthwith upon Sight hereof, to apprehend the said J. O. and to bring him before me, or some other of Her Majesty's Justices of the Peace for this County, to answer the Premises, &c.

Deer-stealing.

A Warrant to levy the Thirty Pounds for killing or wounding a Deer.

To the Constable, &c.

3 & 4 W.
& M. one
Witness,
one Justice.

Suffex ss. **W**Hereas J. O. of, &c. hath been duly convicted before me upon Oath, That he did unlawfully wound, kill, and take away one Fallow Deer in and from the Park of Sir T. B. Baronet, on the 30th Day of March last past, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited the Sum of 30 l. These are therefore to require you, or some or one of you, forthwith to levy the said 30 l. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said J. O. and that you pay and dispose of one Third Part thereof to R. H. who informed me of the said Offence; and that you distribute another Third Part thereof to and amongst the Poor of the Parish of L. where the said J. O. was committed; and that you pay the other Third Part to the aforesaid Sir T. B. being the Owner of the said Deer; and if it shall happen that the said J. O. shall not have any Goods or Chattels within your Parish sufficient to satisfy the said Forfeiture of 30 l. that then you certify me thereof, that such further Order may be taken therein, as is pursuant to the said Statute: And hereof fail not, &c.

A *Mittimus*, for Want of a Distress; viz. To remain in Gaol for a Year without Bail, and at the End of the Year to stand in the Pillory for an Hour. Which see *Antea*.

The like Warrant *mutatis mutandis*, to levy 30 l. for taking in Toils; and the like Commitment for Want of Distress; or against Aiding, Assisting, &c.

A Warrant to enter the House of a suspected Person, and search for Venison, &c.

To the Constable, &c.

3 & 4 W.
& M. cap.
11,

Suffex ss. **W**Hereas Complaint hath been made unto me by, &c. That several Fallow Deer have been lately unlawfully coursed, hunted, killed, wounded, and taken in Toils, by Persons unknown, in the Park of Sir T. B.

Ba-

Baronet, in the said County, and have been carried out of the same; and I being inform'd, That Venison, and Deer-Skins have been lately seen in your Parish: These are therefore to require you, upon Sight hereof, forthwith to enter into and search the Houses, Out-houses, Yards, and other Places in your said Parish, of such Person or Persons whom you shall justly suspect or be inform'd to have any Venison or Skins of Deer; and if you shall find any such, that then you apprehend the Persons so suspected to have unlawfully come by the same, or in whose Houses or Places any such Venison or Skins of Deer shall be found, and bring them before me, or some other Justice of the Peace for this County, to be proceeded against according to Law; and hereof fail not. Given, &c.

A Warrant to levy the 30 l. for not giving an Account how he came by such Venison or Skins.

To the Constable, &c.

Suffex ss. **W**Hereas J. O. of L. hath this present Day been duly convicted before me, by not giving a good Account to me how he came by certain Pieces of Venison, which upon Search were found in his House, in the Parish of H. &c. and not being able to produce the Party of whom he bought the same, or some credible Witness to make Oath of the Sale thereof to him; so that he hath forfeited the Sum of 30 l. according to the Form of the Statute in that Case made and provided: These are therefore to require you forthwith to levy the said 30 l. so forfeited as aforesaid, by Distress and Sale of the Goods and Chattels of the said J. O. and that you pay one Third Part thereof, *ut prius*.

Mittimus, for want of Distress.

To the Constable of, &c. and to the Keeper of Her Majesty's Gaol of H. in the County aforesaid.

Suffex ss. **W**Hereas you the said Constables were by my Warrant charged to levy 30 l. on the Goods and Chattels of J. O. by Distress and Sale thereof, the said Sum being forfeited by him for not giving me a good Account (as in the former Warrant): And whereas you have returned unto me, that the said J. O. hath not sufficient Distress whereof the said Forfeiture may be levied: These are therefore to require you to apprehend the said J. O. and to convey him to the Common Gaol at H. in the said County, and to deliver him

3 & 4 W.
& M. c. 10.

Deer-stealing.

him to the Keeper thereof; and I do hereby command you the said Keeper to take the said J. O. into your Custody, and to keep him safely in the Gaol without Bail for the Space of twelve Months next ensuing, and at the End thereof to deliver him to the Chief Magistrate of the Town of L. who is to set the said J. O. in the Pillory in the said Town on some Market-Day, there to stand by the Space of one Hour. And hereof fail not, &c.

Nota, If the Offender doth not pay the 30 l. upon his Conviction, the Constable may keep him in Custody, not exceeding two Days, in which Time he may know whether any Distress is to be taken; and this is to prevent his running away, or removing his Goods.

Nota, Before any *Certiorari* shall be allowed, the Offender must give Bond to the Prosecutor to pay full Costs within a Month after Conviction confirm'd, or a *Procedendo* allowed: These Costs are to be ascertained on Oath:

Robertus Unibersi. &c. Nos, &c. There must be two Sureties, such as the Justice shall approve.

The Condition of the said Bond.

THE Condition of this Obligation is such, That whereas the above-bounden J. O. was lately convicted before H. P. Esq; one of Her Majesty's Justices of the Peace for the County aforesaid, at the Prosecution of R. H. above-named, for that he the said J. O. had several Pieces of Venison and Deer-Skins found in his House in H. &c. and not being able to give a good Account how he came by the same, in such Manner as is required by a Statute in that Case made and provided: And whereas the said J. O. hath obtain'd a Writ of *Certiorari* to remove the said Conviction, and the Proceedings thereon, into Her Majesty's Court of *Queen's-Bench* at *Westminster*: If therefore the said J. O. shall pay or cause to be paid unto the said R. H. his full Costs to be ascertained upon the Oath of the said R. H. which he shall sustain in any wise concerning the Prosecution of the said Conviction, within one Month after the same shall be confirmed, or a Writ of *Procedendo* shall be allowed thereon by the said Court, that then this Obligation shall be void.

A Mittimus for the pulling down or destroying Pales in the Night-time.

To the Constable, &c. and to the Keeper of the Common Gaol, &c.

suffer ff. **W**Hereas Complaint hath been made unto me, That J. Q. of your Parish, &c. did on the second Day of *May* last past, in the Night-time of the said Day, pull down and destroy several Pales of the Park of Sir T. P. Bar. in the County aforesaid, contrary to the Statute in that Case made and provided: And whereas the said J. Q. hath been duly convicted before me this present Day upon Oath, for the said Offence: These are therefore to charge and command you to apprehend the said J. Q. and to convey him to the Gaol aforesaid, and to deliver him to the Keeper thereof, together with this Warrant, commanding you the said Keeper to take him into your Custody, and him safely to keep in the said Gaol for the Space of three Months without Bail. Given under my Hand &c.

3 & 4 W.
& M.
3 Months
Imprison-
ment with-
out Bail.

Deopand, See Casual Death in Homicide.

Dissenters, and Divine Service.

BEfore I mention any Thing under this Title, relating to the Office of a Justice of Peace, I think it may not be improper to give a short Account of the Rise and Continuance of the Divisions amongst us, *viz.*

Some certain Ceremonies which had been used in Times of Popery, were thought fit to be continued by our Reformers, as useful to beget some Reverence in Holy Exercises, but chiefly in Hopes to bring those of the *Roman* Communion more easily to comply with that Reformation.

There were some Divines in the Beginning of the Reign of Queen *Elizabeth*, who fled from Persecution in the Reign of Queen *Mary*, and had by that Means seen the Methods and Usage of Foreign Churches, particularly that of *Geneva*, complained of this as a Compliance with Popery; and therefore, since we had reformed from the Errors of that Church, would have none of their Ceremonies continued in ours.

The Queen was persuaded, by some Persons of Power then at Court, to take the Revenues of the Bishopricks and Cathedrals into her own Hands, which would not only enrich the

Dissenters, and Divine-Service.

the Crown, but it would likewise be an Expedient to unite all the Reformed Churches, and to bring the *English Church* to the Model of that of *Geneva*.

This was opposed by some wise Ministers at that Time: who told the Queen, That if Matters of Religion came to be thus regulated here by popular Persons, they would quickly set up a Power distinct from Hers in Church-Matters, which by Consequence would intrench upon Her Prerogative.

This seemed so reasonable to Her, that she resolved to maintain the ancient Government in the Church, and continued their Ceremonies; which the other Party did not dislike as unlawful, but for the Reasons aforesaid.

And now these Differences which were small in the Beginning, became fixed and settled into Factions, and those who were against the Ceremonies, reproached the Churchmen with *Non-Residence*, *Pluralities*, and many Abuses in the Spiritual Courts; and thus Matters stood for many Years in Her Reign.

Afterwards, Lectures were set up in most Cities and Market-Towns: I will not examine whether this was done purely in Opposition to the Church, or whether it was upon any Dislike of the mean Performances of those Persons who served the Cure in these Places; it may be the latter.

For in ancient Times, the settled Allowance for the Secular Clergy in great Towns, &c. was very small, because the Perquisites were considerable by Oblations and otherwise; and even in the latter Ages of Popery, the Churchmen of these Places lived plentifully, tho' their Stipends were small for the Superstition of these Times provided Fees for them by *Obits*, *Exequies*, and *Masses*, and they were obliged to live singly.

But these Things being disused after the Reformation, and the Allowances of the Clergy in great Cities and Towns being still very small, might be the Occasion for the richer Sort of People in these Places to maintain Men of greater Abilities than the Incumbents, by a voluntary Contribution.

These Men, by their Zeal in Preaching, gained a Party to themselves; who depending upon the Bounty of the People were generally inclined to submit to the Humours of the chief Contributors, and by this Means the Division was still increased.

In the succeeding Reigns, the People were not only settled into Parties, but were distinguished by Names, viz. The *Court* and *Country* Parties.

The Clergy stood firm to the Interests of the Court and those who opposed that Interest in Civil Affairs, always cherished the other Party, commending them for

good Protestants, and that it was the Interest of all Parties to unite.

But instead of that, the Breach was made wider by the Civil Wars, and both then and afterwards some designing Persons have, by sly Insinuations and other Methods, laboured to make both Parties Tools by Turns, to break in upon and crush one another, that they might make a Way for the common Enemies to enter.

But the Nation being come to a better Temper, a Law was made, *Anno 1 Guil. &c.* That neither the Statutes of 1 *Eliz.* cap. 2. 23 *Eliz.* cap. 1. 3 *Jac.* cap. 4. (which I shall mention more particularly hereafter) shall extend to Persons dissenting from the Church.

They must likewise subscribe the Declaration mention'd in the Statute of 30 *Car.* 2. cap. 1.

These Oaths and Subscriptions the Justices in Sessions have Power to administer and take; and these who do take the Oaths must pay 6 *d.* for registering, and 6 *d.* for a Certificate.

They shall not be liable to the Penalties in 35 *Eliz.* & 22 *Car.* 2. nor be prosecuted in any Ecclesiastical Court for Non-conformity.

But they must not assemble in Places with Doors locked, barred or bolted, nor until the Place is certified to the Bishop of the Diocese, or to the Archdeacon, or to the Justices at Quarter-Sessions, and registred there, and they have a Certificate thereof.

If chosen to any Parish Office, they may execute it by Deputy.

Then as to their Preachers, if they take the Oaths, and subscribe the Declaration at the Quarter-Sessions where they live, shall not be liable to the Penalties in the Statute of 17 *Car.* 2. cap. 2. Which is not to come within 5 Miles of any Town that sends Burgesses to Parliament, if he hath not declared his Assent and Consent to the Book of *Common-Prayer*, &c. under the Penalty of 40 *l.* nor to the Penalties in 22 *Car.* 2. cap. 1. which in being convicted of Preaching at a Conventicle, he forfeits 20 *l.* nor to the Penalty of 100 *l.* mentioned in 13 & 14 *Car.* 2.

But then these Preachers must declare their Approbation, and subscribe the Articles of Religion, except these Words in the 20th Article, *viz.* The Church hath Power to decree Rights and Ceremonies, and Authority in Matters of Faith: And except the 34th Article; which is, That the Church hath Power to appoint Rights and Ceremonies which are not contrary to the Word of God, and that private Person are bound to conform to such Ceremonies: And except the 35th Article, which concerns the reading Homilies in Churches: And

Dissenters, and Divine-Service.

And the 36th Article, which relates to the Consecration of Bishops, &c.

Disturbing
Preachers.

Preachers thus subscribing, &c. shall not serve on Juries, and shall be exempt from Parish Offices.

And if any Person disturb them in Preaching, he shall find Sureties to be bound with himself in a Recognizance of 50*l.* to appear at the Sessions; and being convicted there, shall forfeit 20*l.* to the Queen.

If he will not find Sureties, he shall be committed to Prison till next Sessions.

The Proof must be by two Witnesses on Oath, before one Justice.

Anabap-
tists.

There is a Clause in this Act, which concerns the Preachers in *Anabaptist* Congregations, viz. That if they subscribe the Articles of Religion, excepting in that Part of the 27th Article, which relates to Infant-Baptism, and shall take the Oaths, and make and subscribe the Declaration, that they shall enjoy the same Advantages which Dissenting Ministers have by that Law.

Quakers.

Any Justice of Peace may require a Dissenter to make and subscribe the said Declaration, and to take the aforesaid Oaths; but because there are some Persons who scruple to take any Oath, therefore Provision is made to exempt them from the Penalties aforesaid, if they make and subscribe the said Declaration, and likewise the Declaration of Fidelity; (which see in Title Oaths.)

They must likewise subscribe a Profession of their Christian Belief, in these Words:

I *A. B.* profess Faith in God the Father; and in Jesus Christ His Eternal Son, the True God; and in the Holy Spirit, One God Blessed for evermore: And do acknowledge the Holy Scriptures of the *Old* and *New Testament* to be given by Divine Inspiration.

These Declarations and Subscriptions must be recorded at the Quarter-Sessions.

And if any Person refuse the Oaths when tender'd, he shall not be admitted to make and subscribe the Declarations, tho' required by a Justice of Peace at the Sessions, if he cannot, within 31 Days after such Tender, produce two Protestant Witnesses to testify on Oath that they believe him to be a Protestant Dissenter, or produce a Certificate under the Hands of four Protestants conformable to the Church, or who have taken the Oaths, &c. and he must likewise have a Certificate under the Hands and Seals of six or more of the Congregation to which he belongs, owning him to be one of them.

And

Dissenters, and Divine-Service.

123

And until such Witnesses and Certificate are produced, the Justice must take a Recognizance, with two Sureties of 50 *l.* for producing the same, or otherwise shall be committed till that Time.

But by this Act 'tis declar'd, That all the Laws made for frequenting Divine-Service on the Lord's-Day, are in Force against all Persons except they come to some Religious Assembly allowed by Law.

Now the Statutes which were made for frequenting the Church, are these: *Viz.*

By 1 *Eliz. cap. 2.* All Persons above the Age of Sixteen, are enjoyn'd to come every *Sunday* and Holiday to their Parish-Church, Chappel, or to some Place where Common-Prayer is used, and to abide there soberly during the Time of Service, or shall forfeit 12 *d.* for every Offence, to be levied by the Church-wardens for the Use of the Poor of the Parish, and may be punished likewise by the Censures of the Church, having no reasonable Excuse to absent. 3 *Letters 61.*

About 23 Years afterwards, another Statute was made, by which it was enacted, That every Person, not coming to Church as enjoined by the Statute of 1 *Eliz.* and being thereof *lawfully convicted*, should forfeit 20 *l.* per Month, and if they did forbear for a Year after a Certificate thereof made by the Ordinary into B. R. then one Justice of the Peace of the County where they dwell might bind them with two Sureties in 200 *l.* at the least, to be of the good Behaviour; which Recognizance is not to be discharged till they come to Church. 23 *Eliz. cap. 1.*

The Forfeiture was to be divided between the Queen, Poor, and Prosecutor; and if not able, or not paid within three Months after Conviction, must be committed till they conform, or pay it.

The Prosecution upon these Acts, is to be within a Year and a Day after the Offence, and before the Justices in Sessions.

But Conformity before Judgment, either before the Bishop of the Diocess, or in Session, discharges the Penalties.

Several Persons were indicted upon this Statute of 23 *Eliz.* and were outlawed upon it, and moved the Court to be discharged upon Submission and Conformity; but it was denied until the Outlawry should be reversed, or they pardon'd. 4 *Leon. 54.*

Those who would see a Precedent for an Action of Debt brought on this Statute, may find it in 1 *Lut. 201.* 1 *Lut. 201.*

About 6 Years afterwards it was enacted, That the Conviction should be at B. R. or at the Assizes, and that all Grants with Powers of Revocation should be void against the Queen, so as not to deprive her to levy the said Forfeiture of 20 *l.* per Month. 29 *Eliz. cap. 6.* And

Dissenters, and Divine-Service.

And after such Conviction, the Offender shall in every *Easter* and *Michaelmas* Terms pay into the *Exchequer* after the Rate of 20 *l.* per Month, without any farther Conviction; which if he neglects to do, then a Process was to issue out of that Court to seize all his Goods, and two Thirds of all his Lands and Leases, for so long Time as he shall forbear coming to Church.

Noy 117.
Lane 60.
1 Lut. 208.

Note, That by the Statute 23 *Eliz.* the Informer is to have a third Part of the Forfeiture; but if the Defendant is convicted by Indictment upon the Statute of 29 *Eliz.* before an Information brought, then the Queen is to have the Penalty; and therefore such a Conviction is a good Plea in Bar to any Information afterwards brought.

3 Jac. c. 4.

By the Statute of 3 *Jac. cap. 4.* one Justice of the Division where a Person liveth not coming to Church, may, upon Proof of his Default by one Witness on Oath, send for the Offender, and if he cannot give a satisfactory Excuse, the Justice may send a Warrant to the Church-wardens of the Parish to levy the 12 *d.* for every Offence, and if no Distress can be taken, may then commit him till paid.

Retaining a Servant absenting, &c. for a Month, the Master forfeits 10 *l.* per Month.

In *Michaelmas* Term, 12 *Jac.* Dr. *Foster* was prosecuted upon the aforesaid Act of 23 *Eliz.* by Information in *B. R.* *tamquam*, &c. for the 20 *l.* per Month; and it was objected That he ought to be convicted upon a former Prosecution before this Information could be brought; because he is not to incur the Penalty of 20 *l.* till he is lawfully convicted. Which are the express Words of the Statute.

But it was resolved, That he might be convicted of this Penalty by the very Information then brought, and that it was not necessary to shew a former Conviction, for till that Time nothing is forfeited.

28 *Eliz.*
35 *Eliz.*

Then it was objected, That the 20 *l.* was given to the Queen by two subsequent Statutes, so that the Informer could have nothing.

But it was resolved, That the Statute of 28 *Eliz.* did not take the Benefit which Informers had by the Statute of 2 *Eliz.* because it extended only to Indictments, and left Informations as they were before; and as to the 35th of *Eliz.* the Statute gave the Queen as large a Remedy as the former for before that Statute she had no Remedy but by Indictment; which was defective in this Case, because if a Female Covert had been convicted, the Queen could not have levied the Penalty on her Husband, for he was no Party to the Suit. Now that Statute gave her an Action of Debt for it, in which the Husband might be joined, and answer for the Non-conformity of his Wife.

Dissenters, and Divine Service.

225

An Information was brought for not coming to Church for such a Time, and concluded, *contra formam Statuti*; but because there are *Three Statutes* concerning this Matter, and 'tis incertain to which it doth refer, therefore it was discharged; but 'tis now held, That *contra formam Statuti* is well enough. 2 Cro. 142. 3 Lev. 61.

The Precedents upon the Statute of 1 Will. are as follow.

The Form of the Certificate by Four Protestants conformable within 31 Days after the Tender, &c.

WE whose Names are hereunto subscribed, being all conformable to the Church of England, do hereby certify whom it doth concern, That we do verily believe that J. O. of, &c. is a Protestant Dissenter. Given under our Hands, &c.

The Form of a Certificate by Four Protestants not conformable, &c.

WE whose Names are hereunto subscribed, having all taken the Oaths, and subscribed the Declaration enjoined by a Statute made in the First Year of the Reign of the late King William and Queen Mary, Entituled, *An Act for exempting their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws*; do hereby certify, That we do verily believe J. O. of, &c. is a Protestant Dissenter. Given under our Hands, &c.

The Form of a Certificate from Six of the Congregation.

WE whose Names are hereunto subscribed, being Members of the Congregation of, &c. do hereby certify whom it may concern, That we do own J. O. of, &c. to be one of our said Congregation. Given under our Hands and Seals, &c.

A Recognizance with Two Sureties, &c.

Memorand' quod 11 die Junii, &c. venerunt coram me R. B. Armigero, un' Justic' dict' Dom' Regis' Pacem in Com' prad' conservand' assign' J. O. de H. in Com' prad', Husbandman, T. P. de eadem Taylor, & T. B. de P. in Com' prad', Yeoman, & recognoverunt se debere dict' Dom' Regis', quilibet manucaptor' prad' in quinquaginta libris, & J. O. prad.

Q

pred' in centum libris bona & legalis moneta Angliæ de bonis & catallis terris & tenementis suis fieri & levare ad opus diæ Dom' Regin' hæred' & successorum suorum si prædict' J. O. defecerit in Conditione infrascript.

The Condition of this Recognizance is such, That whereas the Oaths enjoined to be taken by an A& made in the First Year of the Reign of the late King *William* and Queen *Mary*, Entituled, *An Act*, &c. were on the First Day of *August* last past tendred to the above-bounden J. O. by the aforesaid R. B. which he the said J. O. did then refuse to take; and whereas also he was on the Third Day of the said Month of *August* required by the said R. B. to make and subscribe the Declarations enjoined likewise by the said A&: Now if the said J. O. shall within Thirty one Days after such Tender of the said Declarations as aforesaid, produce * a Certificate under the Hands of Four Protestants who are conformable to the Church of *England*, or of Four others who have taken the Oaths, and subscribed the Declaration in the said A& mentioned, attesting him the said J. O. to be a Protestant Dissenter; and shall likewise produce within the Time aforesaid, another Certificate under the Hands and Seals of Six or more sufficient Men of the Congregation to which he the said J. O. doth belong, owning him thereby to be one of them; that then this Recognizance shall be void, &c.

* If he can produce two Protestant Witnesses, who will make Oath, that they believe him to be a Protestant Dissenter, then there is no Occasion of these Certificates.

Commitment where the Party cannot give such Security.

To the Constable of, &c. and to the Keeper of the Gaol for the said County.

Suff: J. **W**Hereas J. O. of H. in the County aforesaid, Yeoman, hath refused to take the Oaths enjoined by an A&, Entituled, *An Act for Exempting their Majesties Subjects*, &c. being lawfully tendred to him on the First Day of *August* last past: And whereas the said J. O. hath since been required by R. B. one of Her Majesty's Justices of the Peace for the said County, on the Fifth Day of *August* last past, to make and subscribe the Declarations mentioned and enjoined by the said A&; but before the said J. O. is to be admitted to the same, he is within Thirty one Days after such Tender of the Declarations, to produce two sufficient Protestants to testify upon Oath, That they believe him to be a Protestant Dissenter, or a Certificate, &c. *ut prim.* And whereas the said J. O. hath not within the Time aforesaid.

aforesaid produced such Certificates as aforesaid, or Two Witnesses to attest his being a Protestant Dissenter, and hath not entered into a Recognizance with Two Sureties in the Penal Sum of 50 l. &c. for his producing the same: These are therefore to command you to apprehend the said J. O. and him safely to convey to the Gaol aforesaid, and to deliver him to the Keeper thereof, together with this Precept; commanding also you the said Keeper to receive the said J. O. into your Custody, and him safely to keep, until he has produced such Certificates, or Two Witnesses as aforesaid. Given under my Hand and Seal the Tenth Day of September, &c.

A Certificate from the Clerk of the said Peace for one who produceth Witnesses or Certificates according to the aforesaid Act, for which he is to take 6 d. and no more.

Justices ss. **T**Hese are to certify whom it may concern, That J. O. of, &c. appeared before Her Majesty's Justices of the Peace at the General Quarter-Sessions of the Peace held for the said County at L. on the Seventh Day of, &c. and declared that he was a Dissenter from the Church of England, and scrupled to take any Oath, but desired to be admitted to make and subscribe the Declaration mentioned in a Statute made in the 30th Year of the Reign of the late King Charles the Second, Entituled, *An Act to prevent Papists from sitting in either House of Parliament*; and likewise to make and subscribe the Declaration of Fidelity and Profession of his Christian Belief in the Form enjoined by one other Act made in the First Year of the Reign of the late K. William and Q. Mary, Entituled, *An Act for Exempting Their Majesties Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws*, &c. and did then and there give full Satisfaction to the said Court, That he was not a Papist; and * produced a Certificate under the Hands of Four Protestants, which the said J. O. made appear to the said Court to be † conformable to the Church of England; who did certify, That they believed him to be a Protestant Dissenter; and did also produce another Certificate under the Hands and Seals of Six sufficient of the Congregation of, &c. to which the said J. O. was admitted at the said Sessions to make and subscribe the aforesaid Declaration and Profession of his Christian Belief; and did make and subscribe the same accordingly, which are there entred on Record. Signed and dated the Day of November, in the Year of our Lord 1701.

* Or Two Protestant Witnesses upon Oath.

† If Dissenters, then he must make it appear that they have taken the Oaths, &c.

A Warrant to bring an Offender in not coming to Church before the Justices.

To the Constable of, &c.

3 Jac. c. 4.

One Witness upon Oath. Prosecution within a Month after Conviction.

Suffex ff. **W**Hereas I have been informed upon Oath, That *T. P. of, &c.* did not upon *Sunday* last past repair to any Church, Chappel, or other usual Place appointed for Common-Prayer, and there hear Divine Service, according to the Statutes in that Case made and provided: These are therefore to require you to bring the said *T. P.* before me, or some other Justice of the Peace for this County, to answer the Premises: And hereof fail not. Given under my Hand and Seal, &c.

A Warrant to levy the Penalty of Twelve Pence for not coming to Church.

To the Church-wardens of the Parish of H. in the County of Suffex, or to either of them.

Suffex ff. **W**Hereas I have been informed, That *T. P. of, &c.* did not upon *Sunday* the 17th Day of *August* last past, nor upon the *Sunday* next following, nor upon the *Sunday* next after that, repair to any Church, Chappel, or other usual Place appointed for Common-Prayer, and there hear Divine Service, according to the Statutes in that Case made and provided; and the said *T. P.* being brought before me, did not make a sufficient Excuse and due Proof thereof, so as to satisfy me why he absented himself as aforesaid: These are therefore to require you, or one of you, to levy 3 s. upon the Goods of the said *T. P.* by Distress and Sale thereof for his Three Defaults, as aforesaid, and to imploy it for the Use of the Poor of the said Parish; and if no such Distress can be taken, that you then certify me thereof as soon as may be, that such farther Proceedings may be had therein as to Justice doth appertain. Given, &c.

If no Distress can be taken, then the Party may be committed to Gaol. The Form of the Warrant as followeth:

To the Constable of, &c. and to the Keeper of the Gaol at, &c.

Suffex ff. **W**Hereas the Church-wardens of, &c. were lately commanded by my Warrant to levy 3 s. upon the Goods of *T. P. of the Parish of, &c.* for not repairing to any

any Church or Chappel, or other usual Place appointed for Common-Prayer, and there hear Divine Service on Sunday the Seventh Day of August last past (ut prius) according to the Form of the Statute in that Case made and provided; and the said Church-wardens have certified unto me, That the aforesaid T. P. hath not any Goods or Chattels whereon to levy the said Penalties: These are therefore to require you the said Constables to take the aforesaid T. P. and to convey him to the Gaol of the said County, and to deliver him to the Keeper thereof, together with this Warrant, commanding you the said Keeper to receive him into your Custody, and him safely to keep until he shall pay the said 3 s. And hereof fail not. Given, &c.

Indictments upon the above-mentioned Statutes.

An Indictment upon the Statute of 1 Eliz. cap. 2. for not coming to Church. Vid. 3 Jac. c. 4.

Suff. ff. JUR', &c. quod F. O. de H. in Com' præd' Yeoman, & E. Ux. ejus utroque eorum existen. ætatis 16 Annorum & amplius ac existen. Parochian. Ecclesiæ Parochialis de H. prædict. in Com. Suffex prædict. infra quam quidem Ecclesiæ Communes Prædicationes & alia Divina Servitia die Dominico prox. post Festum Sancti Michaelis Archangeli Anno Regni Domine Regine nunc secundo, & decem diebus Dominicis tunc prox. sequen. & sex aliis diebus Festivis easdem decem dies Dominicas intervenientibus, dicebantur & utebantur prædict. F. & E. non habent. legalem nec rationabilem excusationem seu impedimentum abessendi ab Ecclesiæ prædict. in diebus prædict. quando Communes Præces, Prædicationes & Divina Servitia ibidem tunc dict. habet. & ministrat. erant non solum non admittebantur adire Ecclesiæ prædict. de H. existen. eorum parochial. Ecclesiæ consuet. sed seipsos voluntarie absentaverunt & uterque eorum absentavit ab Ecclesiæ prædict. die Dominico prox. post Festum Sancti Michaelis Archangeli Anno Regni dictæ nunc Regine secundo & præd. aliis decem diebus Dominicis tunc prox. sequen. & præd. aliis sex diebus Festivis inter easdem decem dies Dominicas intervenien. tempore prædict. Communium Precum, Prædication. & Divin. Servitiorum ibidem in dictis diebus illi usitat. & ministrat. contra Pacem & in Contemptum dict. Dom. Reg. nunc & Legum harum & Coron. & Dignitates suas, ac contra Formam Statuti prædict.

The Prosecution upon the Act of 1 Eliz. afore-mentioned, must be by way of Indictment at the next General Sessions after the Offence committed.

Dissenters, and Divine Service.

The Prosecution upon the Statute of 3 Jac. cap. 4. must be within a Month after the Offence, and by Warrant from the Justice of the Division where the Offender liveth.

An Indictment upon the Statute of 23 Eliz. cap. 1. for not coming to Church.

Suff. ff. JUR' &c. quod J. O. de H. in Com' Suffex, Yeoman, *decimo octavo die Augusti, Anno Regni Reginae Annæ, &c. secundo, fuit ætatis sexdecim Annorum & amplius, & à prædicto decimo octavo die Augusti usque ad decimum diem Julii tunc prox. sequen. videlicet per spatium undecim mensium non accessit (Anglice, did not repair) Ecclesie sue Parochial. de H. præd. nec alicui alie Ecclesie, Capelle, vel usuali loco Communis Precis, sed per totum tempus prædict. voluntarie & obstinate * absq; aliqua, rationabili causa abstinuit ab eisdem per spatium undecim mensium præd. contra formam Statuti in hujusmodi casu edit. & provis. in dicta Dom. Regine nunc & Legum suarum Contemptum, ac contra Pacem dict. Regin. Coron. & Dignitatem suam.*

* If these Words had been omitted, the Indictment had been

ill. Judgment 20 l. per Month, and if absent a Year, bound to Good Behaviour, and not discharged till conform.

Aliter.

23 Eliz. c. 1. Suffex ff. JUR' &c. quod D. P. de H. in Com' prædict. Gen. *12 die Februarii, Anno Regni, &c. fuit ætatis sexdecim Annorum & amplius & non accessit (Anglice, did not repair) ad Ecclesiam suam Parochial. nec ad aliquam aliam Ecclesiam, Capellam, sive usual. locum Communis Precationis & divini Servitii ad aliquod tempus infra spatium unius mensis prox. sequen. 12 diem Februarii, Anno supradicti, sed voluntarie & obstinate absq; aliqua legitima causa abstinuit ab eisdem, (Anglice, hath forborn the same) contra formam Statuti in hujusmodi casu edit. & provis. ac contra Pacem dict. Domine Regin. nunc Coron. & Dignitatem suam, &c.*

Four Persons were indicted upon this Statute, for that neither they nec eorum uterque came to any Parish-Church, &c. it was objected, That the Word *uterque* signified one of them, and not each of them; but it was held to be Surplusage, and not to hurt the Indictment.

The Plea to this Indictment.

ET præd. J. O. in propria persona sua venit & defendit totum, & quicquid quod est contra Pacem & in Contemptum Dom. Reg. nunc vel Legum suarum superius fieri supposit. protestando quod Indicta-

Suff
H. p
Sacr

Indictamentum præd. versus eum exhibit. minus sufficiens. in lege existit. ad quod necesse non habet, nec per legem terræ tenetur respondere, pro placito tamen idem J. O. ulterius dicit quod de præd. non accessu alicui Ecclesiæ, Capellæ vel usuali loco communis Precis aut de absentatione inde contra formam Statuti præd. in Indictamento præd. specificat. vel de aliqua alia transgressionis offens. aut contempt. in Indictamento præd. superius fieri supposit. ipse non est inde culpabilis & de hoc ponit se super Patriam & W. Wheeler Gen. qui pro Dom. Reg. in hac parte sequitur similiter. Ideo ven. inde Jur. &c.

But Offences against this Statute may likewise be prosecuted upon an Information in the Courts at *Westminster*, and not only in the Counties where they are committed, for they are excepted out of the Statute of 21 Jac. cap. 4. which limits popular Actions by Informers to be prosecuted within the proper Counties.

An Indictment against a Minister for marrying without a Ring.

Suffex ff JUR. &c. quod J. S. de H. in Com. prædict. Clericus ac Minister Ecclesiæ Paroch. de H. præd. existens, machinans. & intendens. diversa insolita Schismata ritus & consuetudines inter populum dictæ Dom. Regis Regni sui Angliæ suscitare & plurimos subditos suos à ritibus Ecclesiæ Anglicanæ. & à forma Communis Precationis. & Divini Servitii in Ecclesiâ Anglicanâ pie & recte stabilis. & usitat. in Errores ducere quarto die Augusti Anno Regni, &c. apud H. præd. in Com. præd. videlicet in Ecclesiâ Paroch. ibid. quosdam T. P. & E. Uxorem ejus in jure matrimoniali conjunxit & maritavit sine aliquo annulo nuptiali tempore solemnizationis sponsalium inter præfat. T. P. & A. sed idem J. S. adtunc & ibidem sponsalia inter præfat. T. P. & A. celebravit licet præfat. J. S. tempore celebrationis sponsalium præd. aliquem annulum non dedit prout juxta morem & consuetudinem Ecclesiæ Anglicanæ fieri debet & solet contra formam Statuti & Ordinât. in hujusmodi casu edit. & provis. & in depravat. Libri Communis Precationis, ac contra Pacem, &c.

Against one for irreverently behaving himself at Church.

Suffex ff JUR' &c. quod M. V. nuper de H. in Com. prædict. Clericus, Minister & Curator Ecclesiæ Parochialis de H. præd. appunâuat. ad celebrand. & ministrand. Preces sacra & Sacramentalia in eadem Ecclesiâ 4. die Augusti, Anno Regni, &c.

Dissenters, and Divine-Services.

& diversis diebus & vicibus tam antea quam postea irreverenter celebravit & dixit preces & ministravit Sacramentalia in Ecclesia prædictâ non flectens Genua sua (Anglice, Kneeling) sed per totum tempus celebrationis & ministrætionis earundem erectæ stetit in malum exemplum aliorum in hujusmodi casu delinquentium, & contra formam & ordinem Libri (vocat. The Book of Common-Prayer) ac contra formam Statuti in ejusmodi casu edit. & provis. &c.

For not using the Sign of the Cross in Baptism.

Suffex ff. JUR. &c. quod E. G. nuper de L. in Com. præd. Clericus & Rector Ecclesiæ Parochial. de S. A. in L. in Com. prædictâ per spatium sex mensium ult. elaps. debuit dicere communes Precationes secundum modum & ordinem Libri (vocat. The Book of Common-Prayer, &c.) ac debuit etiam infra tempus præd. administrare Sacram. in Ecclesia præd. prout mentionat. vel edit. sunt in Libro prædicto præd. tamen E. G. apud L. præd. in Com. præd. per sex menses præd. recusabat uti & dicere nec usus est Commun. Precation. in Ecclesia Parochial. præd. prout mentionat. in illo Libro; Et quod præfat. E. G. apud L. præd. in Com. quarto die Augusti Anno Regni, &c. ministravit Sacrament. Baptismi in Ecclesia Paroch. præd. cuidam Infanti masculo cujusdam J. O. in alia forma quam dicto Libro illo Communis Precationis continetur & non faciebat Signum Crucis super Frontem ejusdem Infantis in ministrand. Baptism. illi sed Signum illud facere adtunc & ibidem contemptuose recusavit & denegavit in Contemptum dict. Dom. Reg. Legum & Stat. hujus Regni Angl. neque contra pacem dict. Dom. Reg. Coron. & Dignitat. suas, &c.

The Statute of 3 Jac. c. 4. gives Power to Justices in Sessions to enquire, hear and determine of all Recusants and Offences, &c. for not coming to Church; and that at the Sessions in which an Indictment shall be found against such an Offender to make Proclamation, commanding him to render himself to the Sheriff of the County before the next Sessions; and if he shall not then appear, it shall be a Conviction in Law upon the said Indictment for the Offence therein mentioned, as if a Trial had been by Verdict.

That upon such Conviction, he shall either in Easter or Michaelmas-Term, which shall next happen, pay into the Exchequer after the Rate of 20 l. per Month, which shall be contained in the Indictment; and for every Month afterwards, without any farther Indictment or Conviction, 20 l. per Month by half yearly Payments in the Exchequer as aforesaid, except the Queen will take Two Parts in Three of the Lands of the Offender till he conform.

An Indictment upon this Statute.

Suff. ff. **M**emorand. quod ad General. Session. Pacis tent. &c. inter, &c. quod R. B. de L. in Com' præd' Gen. 11 die Sept. Anno Regni, &c. apud L. præd' fuit ætatis sexdecim. Anorum. & amplius & non accessit (Angl. did not repair) Ecclesia Paroch. de S. M. infra L. prædicit. nec alicui alii Ecclesia capelle siue usuali loco communis præcationis nec ibidem fuit tempore communis præcationis ad aliquod tempus infra decem Menses in egros extunc prox. sequen. sed abstinuit ab eisdem (Anglice, hath forbore the same) per spaciū præd. in malum exemplum aliorum & contra pacem dicti Dom' Reg' tunc Coron' & Dignitat. suas, &c. necnon contra formam Statuti in huiusmodi casu edit. & provis. & super hoc facta hic in eadem curia publica Proclamat. pro Dom' Reg' secundum formam Statuti quod præd' R. B. corpus suum redderet Vicecomiti Com' præd' ante proximam Generalem Quarterialem Sess. pacis tenend' pro Com' præd' ante quam quidem General. Quarterial Session. scil. 9 die Julii. existen. prox. General. Quar. Session. Pacis tunc tent. pro Com' præd' post Proclamationem sic ut presentur facti præd' R. B. corpus Vicecomiti Com' præd' non reddidit nec comperavit secundum formam & effectum ejusdem Statuti in ea parte edit. & provis. sed defalt. fuit unde idem R. B. convictus est.

This is no Judgment, because no Trial, and therefore tho' the Conviction should be erroneous, yet no Writ of Error will lie upon it, but the Remedy is to quash it in the Exchequer. Raym. 433.

For not wearing the Surplice.

Middl. ff. **JUR'**, &c. quod W. W. nuper de B. in Com' præd' Clericus die Dominico, viz. quinto die Augusti Anno Regni, &c. apud B. præd' in Com' præd' (viz.) in Ecclesia Parochial. ibid. publice celebravit preces matutinas diversis Parochianis & inhabitantibus ejusdem Parochia adtunc & ibidem in Ecclesia præd' existentibus & tempore celebrationis precum illarum non induit & usus fuit aliquo superpellico (Anglice vocat. a Surplice) aut alio ornamento assignat. ministris utendi infra hoc Regnum Angliæ. quod W. W. præd' quinto die Augusti, Anno supradicto tempore celebrationis precum præd' apud B. præd' in Ecclesia Parochial. præd' minus recusavit induere siue uti aliquo superpellico contra formam Statuti in huiusmodi casu edit. & provis. & contra pacem, &c.

For omitting Words in Baptism.

Middl. H. JUR' &c. quod G. W. nuper de R. in Com. præd Clericus & Rector Ecclesiæ Parochialis de R. præd existeret. quinto die Augusti, Anno Regni, &c. apud R. præd in Com' in dicta Ecclesiæ Parochiali Sacramentum Baptismi. eidam Infanti famini existens. filia T. C. adtunc de R. præd in Com' præd administravit & adtunc & ibidem in Ecclesiæ præd. voluntarie & obstinate omisit & recusavit dicere tempore administrationis Baptismi præd hæc Anglicana verba sequen. (viz.) Quæ quidem verba mentionat. & expressa sunt in libro communis precatationis (Anglice, The Book of Common-Prayer) in dicta communis precatationis derogationem & contra formam Statuti in hujusmodi casu edit. & provis. necnon contra pacem, &c.

And disturbing a Minister's Preaching.

Suffex H. JUR' &c. quod T. R. nuper de C. in Com' præd Yeoman, 5 die Augusti, Anno Regni, &c. apud C. in Com' præd voluntarie publice & contemptuose molestavit & perturbavit quendam T. W. Rectorem Ecclesiæ Paroch. de C. præd adtunc & ibidem in Ecclesiæ præd prædicantem idem T. W. adtunc & ibidem ad illud faciend. ratione cura sue ibidem legitime onerat. & alia enormia eidem T. W. adtunc & ibidem intulit in malum exemplum aliorum in hujusmodi casu delinquent. & contra formam Statuti in hujusmodi casu edit. & provis. necnon contra pacem, &c.

Against a Minister, for not reading the Common-Prayer according to the Act of Uniformity.

Middl. H. JUR' &c. quod H. P. nuper de C. in Com' præd Clericus & Vicarius Ecclesiæ Parochialis de C. præd tunc existens malevola affectat. erga communis preces opportunatas uti in Ecclesiis & Capellis infra hoc regnum Angliæ & auctoritate Parliamenti stabiles. & edit. quæ quidem preces continent. sunt in quodam libro intitulat, The Common Prayer and Administration of the Sacraments, and other Rites and Ceremonies of the Church of England, quinto die Augusti, Anno Regni, &c. die Dominico existente ac diversis aliis diebus Dominicis quibus preces in dicto libro mentionat' debuissent per præd H. P. legi vel dici secundum formam statuti. in hujusmodi casu edit. & provis. apud C. præd in Ecclesiæ præd. ex prava & nequissima mente sua non legit vel usus fuit sed easdem preces penitus omisit fuit & uti totaliter recusavit in dicta Dom' Reg' contemptum ac in malum exemplum

emplum omnium aliorum in huiusmodi casu delinquent. & contra pacem, &c.

Distress. Vide Fees.

Distiller. See Brewers.

Dogs, See Hunting.

Lords of Manors, but not under the Degree of an Esquire, may license Game-keepers within their Manors to seize Dogs, or Persons not qualified; a Justice of Peace may license any other Person by his Warrant to search in the Day-time suspected Houses, and seize and keep the Dogs of unqualified Persons for the Use of the Lord of the Manor. 22 & 23 Car. 2. cap. 25.

Also Constables, &c. may, by a Justice's Warrant, search the Houses of suspected Persons, and if they find any in the Possession of Persons unqualified, they must carry them before a Justice of Peace; and if they do not give good account how they came by such Dogs, they shall be convicted by the Justice, and pay not under 5 *s.* nor exceeding 20 *s.* for every Dog, one Moiety to the Informer, the other to the Use of the Poor where the Offence was committed, to be levied by Distress; and if that cannot be taken, then must he be sent to the House of Correction, for any Time under a Month, but not less than 10 Days, there to be whipt and kept to hard Labour. 4 & 5 Will & Mar. cap. 23. And no *Cartiorari* shall be to remove the Conviction or other Proceedings, unless the Party convicted do, before the Allowance of it, become bound to be Prosecutor in 50 *l.* with Sureties to be approved by the Justice before whom the Conviction was, to pay the Costs and Charges upon Oath within a Month after 'tis confirm'd, or a *Procedendo*.

A Licence to hunt, &c. and to seize Dogs, &c.

TO all to whom this Writing shall come, I R. B. of, &c. Lord of the Manor of W. sent Greeting. Know ye, that I the said R. B. hath given and granted, and do hereby give and grant unto R. P. of, &c. full Liberty and Authority to hunt at all seasonable Times hereafter, for the Space of three Years next ensuing, within the said Manor or Lordship of W. in the County aforesaid, and upon the Lands and within the Limits thereof, in the same manner as I my self might or could do without any Let, Denial, or Disturbance whatsoever,

soever, giving likewise hereby full Power and Authority to the said R. P. and his Assigns, from Time to Time during the said Term, to seize all Dogs and Spaniels whatsoever, of any Person or Persons who are prohibited by the Laws or Statutes of this Realm to keep the same, and who shall during the Term above-mentioned hunt within the said Manor without his Consent, and the said Dogs to keep and detain to and for my Use. Given under my Hand and Seal, &c.

A Warrant to a Game-Keeper, or any other Person, to search for Dogs.

To the Constable of, &c. and to R. P. of H. in the County of *Suffex*, Yeoman.

Suffex ss. **T**Hese are to require you, or either of you, to search in the Day-time, the Houses, Out-houses or Places of any Person or Persons within the Hundred of, &c. whom you shall have just Occasion to suspect, or be inform'd to keep Setting-Dogs, Coney-Dogs, or other Dogs, to destroy Partridges, Hares or Conies, not being qualified * by Law to keep the same; and the Dogs which you shall find in the Possession of such Person or Persons, to seize and keep to and for the Use of the Lord of the Manor where they shall be taken: But you are not to search the Houses of any Person who hath an Estate of 100 l. by the Year, or who hath a Lease for any long Term of Years of the clear Yearly Value of 150 l. by the Year, or of him who is the Son and Heir apparent to an Esquire, or other Person of higher Degree, or of those who are Keepers or Owners of Forrests, Parks, Chases or Warrens; and you are to certify me with all convenient Speed, what you shall do in the Premises. Given, &c.

* 100 l. per
Ann. Son of
an Esquire;
150 l. by
Lease per
Ann. 22 &
23 Car. 2.
cap. 25.

A Warrant to search for Hare, Partridge, &c. directed to the Constable, &c.

4 & 5 W.
& M. c. 5.
23.

Suffex ss. **W**Hereas Complaint hath been made unto me, That the Game in, &c. hath been lately destroyed by idle and disorderly Persons of the Parish of, &c. These are therefore to require you forthwith to enter into, and search the Houses, Out-houses, and other Places within your Parish, of all and every Person or Persons whom you shall justly suspect, or be inform'd to have any Hare, Partridge, Pheasant, Fish, Fowl, or other Game; and where you find any such, to apprehend the said Person suspected to have unlawfully

lawfully come by the same, and to bring him before me, or some other Justice of the Peace for this County, to answer the Premises. And hereof fail not. Given, &c.

Hare, } A Warrant to levy any Sum not under 5 s.
 Fish, } or above 20 s. for every Hare, Par-
 Fowl, } tridge, Pheasant, Pidgeon, Fish, Fowl,
 Pheasant, } or other Game, found upon Search, as
 Partridge, } aforesaid.
 Pidgeon. }

To the Constable, &c.

Suffex ss. **W**Hereas T. B. of, &c. hath this present Day been lawfully convicted before me, for that he did not give a good Account how he came by a Brace of Hares which were found in his House, in the Parish of A. upon Search made for that Purpose, and not being able to produce the Party of whom he bought the same, or some credible Witness to make Oath of the Sale thereof to him, pursuant to the Statute in that Case made and provided: These are therefore to require you forthwith to levy the Sum of 20 s. by Distress and Sale of the Goods of the said T. B. which said Sum is by me ascertained for his said Offence, as forfeited for the same; and that you pay one Moiety to the Churchwardens or Overseers of the Poor of the said Parish where the said Offence was committed, for the Use of their Poor; and for want of such Distress, that then you certify me thereof, that such farther Order may be taken therein as the Law directs. And hereof fail not, &c.

4 & 5 W.
& M.

Commitment for want of Distress.

To the Constable of, &c. and to the Keeper of the House of Correction at L. &c.

Suffex ss. **W**Hereas you the said Constable, &c. were lately by my Warrant required to levy 20 s. on the Goods and Chattels of T. B. of, &c. by Distress and Sale thereof, which said Sum was by him forfeited, for that he did not give a good Account how he came by a Brace of Hares found upon Search in his House in the Parish of, &c. and not being able to produce the Party of whom he bought the same, or some credible Witness to make Oath of the Sale thereof unto him; for which Offence the said T. B. hath been lawfully convicted before me. And whereas you have in-
 formed

One Justice,
4 & 5 W.
& M. c. 23.

*Not under
10 Days, or
exceeding
one Month.

formed me, That the said T. B. hath not sufficient whereon to distrain for the said Forfeiture. These are therefore to require you forthwith to apprehend the said T. B. and to convey him to the House of Correction in L. &c. and to deliver him to the Keeper thereof, together with this Warrant, commanding you the said Keeper to take the aforesaid T. B. into your Custody, and cause him to be whipt, and kept to hard Labour for the Space of three Weeks * next ensuing the Date hereof. Given under my Hand and Seal, &c.

The like Proceedings upon the same Statute may be had against any of the Offenders following, *viz.* Those who are not qualified, and who keep,

- | | |
|-----------------|---------------------------|
| 1. Bows. | 9. Nets. |
| 2. Coney-Dogs. | 10. Setting-Dogs. |
| 3. Ferrets. | 11. Snares. |
| 4. Grey-Hounds. | 12. Tunnels, or any other |
| 5. Hare-Pipes. | Instrument for destroy- |
| 6. Hays. | ing Fish, Fowl, or any |
| 7. Low-Bells. | other Game. |
| 8. Lurchers. | |

They may be convicted before one Justice, for not giving a good Account how they came by the same, or producing the Party of whom they were bought, &c.

And no *Certiorari* is to be allowed, unless the Offender convicted become bound with Sureties in 50 l. to the Prosecutor, &c. The Form of which Bond and Condition you may see in Title *Deer-stealing*, for the Proceedings are the same.

*A Warrant against One not qualified to keep Bows,
Coney-Dogs, &c.*

To the Constable, &c.

Suffex ss. **W** Hereas I am credibly inform'd, That T. B. of, &c. doth keep and use Grey-hounds, &c. (as the Case is) to destroy the Game, and that he is not qualified by the Law of this Realm to keep or use the same. These are therefore to require you forthwith to apprehend the said T. B. and to bring him before me, or some other Justice of the Peace for this County, to answer the Premises; and farther, to be proceeded against according to Law, Given, &c.

The

The Qualifications are ;

1. He must be Owner of a Free Warren.
2. A Lord of a Mannor.
3. Or he must have an Estate of Inheritance of 100 l. *per Annum*, either in his own, or in the Right of his Wife, or for Life.
4. Or a Lease for 99 Years of 150 l. *per Ann.*
5. Or must be the Son and Heir of an Esquire, or one of an higher Dignity.

22 & 23

Car. 2.

cap. 25.

*A Warrant against One keeping Nets, being not qualified,
viz. To search for them.*

Suffex ff. **W** Hereas Complaint hath been made unto me, That the Fish in, &c. have lately been destroy'd by some idle and disorderly Persons not qualified by Law, either as having a free Fishery, or being Owners thereof, or otherwise lawfully authoriz'd to fish in Navigable Rivers ; and that several Nets, Leaps, Pitches, and other Instruments and Engines, are kept in the Parish of, &c. for the Destruction of Fish, by Persons who are not Makers or Sellers thereof, contrary to the Statute in that Case made and provided. These are therefore to require you forthwith to enter into and search the Houses, Out-houses, and other suspected Places of Persons within your Parish, or of such who you are informed have any Nets or other Instruments for Destruction of Fish, and to seize the same where you shall find any such, and likewise to bring the Person, in whose House it shall be found, before me, or some other Justice of the Peace for this County, to answer the Premisses. And hereof fail not, &c.

Door breaking open : See Arrests, Warrants, Constables, force Lawful.

Drobers, See Badgers.

Drunkennes.

MY Lord Coke tells us, That King Edgar permitting the Danes to inhabit here, they first brought excessive Drinking among us.

I believe this may be a true Account ; for I find in the Sign of the preceding King, that he caused Drinking-Pots of

of Brass to be fixed to Posts near such Springs which were contiguous to the High-ways, that Travellers might drink out of them and be refreshed.

I only mention this, to shew the Temperance of that Age; but after the *Danes* came amongst us, the People soon left drinking *Water*, and in the very next King's Reign began to drink *Ale*; who made a Law, That if any Man quarrelled and beat another in an *Ale-house*, he should pay to the Value of 16 s. in the Money then Current: And this is the first time that we find any Mention of an *Ale-house*, tho' 'tis certain Men drank to Excess before; and King *Edgar* himself made Laws against it, which (by the Way) were very old at that very Time, when my Lord *Coke* told us the Laws against Drunkenness were very new.

3 Inst. 201.

'Tis true, he mention'd King *Edgar*, but look'd no farther back than to the Statutes of King *James*; by which 'tis enacted, That any Justice of Peace upon his own View, Confession of the Party, or Proof of one Witness upon Oath, may convict any Person for Drunkenness.

Being convicted, he is to pay 5 s. for every Offence to the Church-wardens of the Parish where the Offence is committed, within one Week after Conviction; which if he neglects or refuse, the same may be levied upon his Goods by Warrant from one Justice, before whom he was convicted; and if not able to pay it, then he is to be put into the Stocks six Hours for every Offence.

If he is convicted the second time, then he might give Bond in 10 l. viz. Two Sureties, to be of the good Behaviour, or be committed.

The Prosecution must be within Six Months after the Offence.

The Inferior Officer neglecting to levy the Penalty, forfeits 10 s. to be levied and disposed as the Penalty it self.

This is the Substance of the Statutes, 4 Jac. cap. 5. & 21 Jac. cap. 7. the former Statute being made Perpetual by the latter.

The Prosecution upon the first of these Laws was to be and is still, before Justices of the Peace in their Sessions by way of Indictment, where the Offender must be convicted. But by the last Statute, one Justice hath Power to convict this Offender, as above-mentioned; which, as to this Matter was all the Alteration which was made, for the Penalty is the same as before, so likewise is the Manner of Levying it.

Drunkenness is a sufficient Cause to remove a Magistrate.

Th

Drunkenness.

243

The first Conviction within Six Months after the Offence.

*To the Constable of the Hundred of L. and to the Church-wardens of
the Parish of H. in the said County.*

Suffex ss. **W** Hereas J. S. of the Parish of H. in the said
County, Blacksmith, was on this present
Day, upon due * Proof, convicted before me for being drunk
on the 19th Day of *August* last past, in the said Parish: These
are therefore to require you to demand the Sum of 5 s. of the
said J. S. for the Use of the Poor of the said Parish; which,
if not paid into the Hands of the Church-wardens of the Pa-
rish aforesaid within one Week next ensuing, that then you
levy the same upon the Goods and Chattels of the said J. S.
by Distress and Sale thereof, rendring unto him the Over-
plus: And if the said J. S. shall not be able to pay the said
Sum, and if no Distress can be taken, that then you set him
in the Stocks, there to remain for the Space of Six Hours.
Given under my Hand and Seal this 22d Day of *August*, &c.

* Upon
View of
the Justice,
or upon
Confession
or Oath of
one Wit-
ness.

The second Conviction for Drunkenness within Six Months after the Offence.

*To the Constable of, &c. and to the Keeper of the Gaol for the
said County.*

Suffex ss. **W** Hereas J. S. of the Parish of H. in the said Coun-
ty, Blacksmith, was, upon the 22d Day of *Aug-
ust* last, lawfully convicted before me for Drunkenness on
the 19th Day of this Instant *August*, in the Parish aforesaid;
and whereas the said J. S. was in like Manner this present
Day the second Time convicted before me for being drunk
in the said Parish on the 23d Day of *August* last: These are
therefore to require you, or one of you, to bring the said J. S.
before me, or some other Justice of the Peace for this Coun-
ty, to be bound with Sureties to Her Majesty in one Recog-
nizance or Obligation of 10 l. conditioned to be from hence-
forth of the Good Behaviour, according to the Form of the
Statute in that Case made and provided; which if he shall
refuse to do, that then you convey him to the said Gaol, and
deliver him to the Keeper thereof, together with this War-
rant, commanding you the said Keeper to receive the said
J. S. into your Custody, and him safely to keep until he shall
be bound with Sureties as aforesaid. Given, &c.

R

The

The Recognizance.

Suffex ff. **M**emorand. quod primo die Septembris, Anno Regni, &c. venerunt coram me R. B. Ar. un. Justiciar. dict. Dom. Regin. ad pacem in Com. præd. conservand. Assign. T. P. de H. in Com. præd. Taylor, & J. O. de eadem, Yeoman, ac J. S. de eadem, Blacksmith, & recognoverunt se debere dict. Dom. Regin. viz. quilibet manucaptor. in quinque libris separatim & præd. J. S. in decem libris bonæ & legalis monete Angliæ de bonis & tatallis terris & tenementis suis fieri & levare ad opus dict. Dom. Regin. hered. & successorum suorum si defecerit in Conditione infra script.

Capt. & cogn. die & Anno
supradicta coram me,

R. B.

THE Condition of this Recognizance is such, That if the above-bounden J. S. shall personally appear before Her Majesty's Justices of the Peace at the next General Quarter-Sessions of the Peace to be holden at L. for the County of S. and in the mean Time shall be of the Good Behaviour, and shall not depart from the Court without Leave thereof, then this Recognizance to be void, otherwise to be in full Force.

Indictment against a common Drunkard.

Suffex ff. Ur', &c. quod J. S. de H. in Com' præd. Faber Ferrarius per spatium sex mensium jam ultimo elaps. apud H. præd. in Com' præd. fuit & adhuc est ebriosus & diversis diebus & temporibus infra spatium præd. apud Paroch. præd. in Com. præd. ebrius fuit, ac quod idem J. S. diversis temporibus præd. apud Paroch. præd. in ebrietate sua vi & armis, scil. baculus gladiis & cullis in quendam T. P. & alios subditos Dom. Regin. nunc insultum & Affraim fecit & Pacem dict. Dom. Reg. ad mandatum Constabularii Villæ præd. custodire aut observare recusavit in magnam Perturbationem subditorum præd. & contra Pacem, &c.

Judgment
5 s. for every
Offence, and
bound to
good Beh-

viour; if not able to pay 5 s. for every Offence, then he must be put in the Stocks six Hours for every such Offence. Prosecution must be within six Months after the Offence. 4 Jac. cap. 5.

Note, These Statutes do not take away any Jurisdiction which is lodged in the Ecclesiastical Courts, pro Reformatione Morum.

Aliter.

Aliter.

Suffex ff. Jur', &c. quod J. S. nuper de, &c. quarto die Maii Anno, &c. & multis diebus & vicibus tam antea quam postea apud H. in Com. præd. & alibi in diversis aliis locis infra Com. præd. fuit & adhuc est communis Poculator (Anglice, a Drunkard) & communis Perturbator Pacis dict. Dom. Regin. in malum exemplum aliorum dict. Dom. Regina subditorum, & contra pacem dict. Dom. Regina Coron. &c.

Eggs.

OF any Wild-Fowl usually eaten, if taken from the Nest, or destroyed, between the first of March and the last of June, Imprisonment for a Year, and forfeits for every Crane's Egg, or Bustard's Egg, 20 d. For the Eggs of a Bittern, Heron, or Shovelack, 8 d. For the Egg of a Duck, Teal, or other Wild-Fowl, 1 d. 25 H. 8. cap. 11.

Taking or willingly destroying Eggs of Pheasant, Partridge, Swan, Imprisonment for three Months, unless he pay to the Church-wardens of the Parish where the Offence was committed, or Party taken, to the Use of the Poor, 20 s.

Conviction is to be by Confession, or Oath of Two Witnesses, before Two Justices where the Offence is done, or the Party taken. 1 Jac. cap. 27.

Egyptians.

Suffex ff. Jur', &c. quod J. R. & J. H. quilibet eorum ætatis quatuordecim Annorum & amplius existen. quinto die Maii, Anno, &c. apud H. præd. in Com. præd. seipsos appellaverunt Egyptianos, & per eorum locutiones & alias gesturas seipsos quibusdam vagabundis qui communiter vocantur Egyptians, & sic apud H. præd. in Com. præd. à præd. quinto die Maii Anno supradicti usque quintum diem Junii tunc prox. sequen. remanserunt & continuerunt in dict. Domina Regina nunc & Legum suarum Contemptum, & contra Pacem dict. Dom. Regina Coron. & Dignitas suas, & contra formam Statuti, &c.

3 Eliz. c. 26.

If above Fourteen Years of Age, and shall call himself an Egyptian, or shall be in Company with those who disguise themselves in Habit, Speaking, or otherwise like Egyptians, and

continue in England one Month, 'tis Felony without Benefit of Clergy. 1 & 2 Phil. & Mar. cap. 4.

He who transports them, forfeits 40 l. between Queen and Prosecutor.

Escape.

THis is where one is arrested, and afterwards is at Liberty, not being delivered by due Course of Law; and 'tis either Negligent or Voluntary; but in Trespasses, or any Offence not Treason or Felony, there is no Difference whether the same is voluntary or not, for in both Cases the Officer is finable.

By a Stranger.

If a Stranger apprehend a Felon, or one suspected, and delivers him to another who suffers him to go at large, 'tis an Escape in both; for the first Man ought to have delivered him to the Constable.

For Murder, the Township shall be amerced if the Murderer escape *tempore Diurno*, tho' it was committed in the Town, Field, or in a Lane, but then there should be Complaint made to a Justice of Peace.

By Negligence in Officers.

To bail one not bailable by Law *pro defectu Scientie*, is a negligent Escape.

A Gaoler suffering a Prisoner to go abroad, tho' he return, 'tis a negligent Escape, and finable, for he ought to keep him in *arcta Custodia*; yet *per Hales* Ch. Just. If after a negligent Escape, and before the Gaoler is punished, he take the Prisoner upon fresh Suit, he is excused. 3 Rep. *Rigeway's* Case.

If the Gaoler is insufficient, the Sheriff must answer for these Escapes, because 'tis in a Civil Action; but 'tis otherwise where the Offence is Criminal.

The Punishment is aggravated by the Proceeding against the Party escaping; for if attainted, and afterwards he escapes, 'tis 100 l. Fine; if indicted, 5 l. Fine; if not, then 'tis finable at Discretion.

Voluntary.

1. Where 'tis Felony.

1. The Act must be Felony at the Time of the Escape, otherwise 'tis but finable.
2. There must be a legal Commitment.

After a Pardon for Murder, but pending an Appeal, the Prisoner was suffered to escape, 'tis Felony in the Gaoler. *Plowd. 476. B.* So it is likewise to suffer a Felon wilfully to escape, or to bail him, for he hath no Power to take Bail.

'Tis the same Crime in a Justice to take a Felon out of Gaol without Bail, or to suffer him to go at large without Bail or Commitment who confesses a Felony before him.

'Tis Felony likewise in a Constable to suffer a Felon to destroy himself.

He who suffers the Escape, must be punished for the same Crime for which the Party escaping stood committed.

A Man was put in the Stocks upon Suspicion of a Felony, and another lets him go; this was held to be Felony at Common Law, altho' the Party was never indicted.

As to the Amercement of a Vill where a Felony is done, and the Offender escapes, if it is in the *Day-time* the Vill is answerable; but if in the *Night* 'tis otherwise. As for Instance; It was found before the Coroner, That *B.* on the 10th of *January*, 30 *Eliz.* struck another about Four in the Afternoon, with which Stroke he died at Eight in the Evening of the same Day, and the Offender escaped, for which the Town of *Green* in *Suffex* was amerced; but it was discharged, for the Man died in the Night, and it was not Felony before he was dead; which being in the *Night*, the Town is not chargeable for the Escape.

If a Felon escapeth after Condemnation, and is retaken, upon Confession or Proof that he is the same Person, he shall be executed.

Dyer 99.

1 Leon. 107.

Poph. 137.

He who wounded another is taken by a Voluntary. }
 a. No Felony. } Constable and suffered to escape, the wounded Man dies within a Year and a Day, 'tis only finable. *3 Leon. 207.*

A Man is taken for Manslaughter *per infortunium*, or *se defendendo*, and suffered to escape, 'tis not Felony in the Officer, but finable.

These Escapes must be presented before the Offender shall be compelled to answer.

Justices of the Peace have Power in Sessions to enquire of Escapes of Felons. *1 R. 3. 3.*

By a late Statute, the Sheriff may commit his Prisoner to the Gaol where he keeps Prisoners for Debt, and not to the Common Gaol of that County where the Offender was taken, but subject to the same Restrictions, Regulations and Penalties, as if he had been committed to the Common Gaol; and if the Party escape out of such Place, the Sheriff shall be answerable as in other Escapes.

5 Annæ.

R 3

But

But the Offender may be retaken, even upon the Lord's Day, by Vertue of a Warrant from a Judge, upon Oath made before any Person commissioned under Seal of the same Court in the Country; and the Oath duly filed, as if such Oath had been made before the Judge himself.

An Indictment against a Gaoler for a Voluntary Escape of one suspected of Felony.

* Or as the Offence is; if for Murder, then pro feloniam & murdro per ipsum A. B. apud H. præd' in Com' præd' super quendam C. D. fieri & perpetrari supposit. If the Evidence is plain, then say fact' & perpetrat.

Suffex ff. Jur', &c. quod cum quidam S. J. nuper de H. in Com' præd' Spinster, vicesimo die Augusti, Anno Regni, &c. apud H. præd' in Com' præd' * pro suspitione cuiusdam feloniam per ipsum fore perpetrat' captus & arrestatus fuit, viz. pro furatione unius vacce coloris nigri pretii trium librarum felonice per eandem S. J. ut dicebatur abducta, & postea coram R. B. uno Justiciari' dict' Dom' Regin' ad Pacem in Com' præd' conservand' assign' ductus fuit & superinde Die Anno & Loco supradictis cuidam J. L. custodi Gaola dict' Dom' Regin' in & pro Com' præd' apud H. in dicto Com' S. per quoddam præceptum dicti Justiciarii idem S. J. traditus & commissus fuit ad salvo & secure custodiend' in Gaola præd' donec idem S. J. inde legitimo modo deliberatus foret præfat' tamen J. L. tunc custos Gaola præd' postea scilicet 21 die Augusti Anno supradicti apud H. præd' in Com' præd' eundem S. J. adtunc & ibidem in dictis Gaola & custodia existens à præd' Gaola & custodia adtunc & ibidem evadere & ad largum ire voluntarie & felonice permisit contra pacem dict' Dom' Regin' Coron' & Dignitat' suam, &c.

An Indictment against a Constable for the Escape of a Felon committed to him.

* Debito modo.
1 Vent. 170.

Suffex ff. Jur', &c. quod cum T. P. nuper de H. in Com' S. Taylor, vicesimo die Augusti, Anno Regni, &c. apud H. præd' in Com' præd' captus & arrestatus fuit pro suspitione feloniam per ipsum fore perpetrat', viz. pro furatione quinque librarum in pecuniis numeratis de bonis & catallis cuiusdam W. G. de H. præd' in Com' præd' & pro eadem feloniam præd' T. P. Die, Anno, & Loco supradictis * commissus fuit J. O. de L. in Com' præd' Yeoman, adtunc Constabulario Ville de L. præd' existens per præceptum R. B. Ar' un' Justiciari' dict' Dom' Regin' ad pacem, &c. qui quidem J. O. per prædict' præceptum mandat' fuit præfat' T. P. salvo custodire & ipsum & Gaolam sive Prisonam Dom' Regin' apud H. in Com' præd' conveyere sive adducere & adtunc & ibidem tradere custod' Gaola sive Prisona prædict' ad salvo & secure custodiend' donec inde legitimo modo deliberatus foret prædict' tamen J. O. & quidam R. D. nuper de H. in Com' præd' Labourer, præfat' T. P. sic in custodia præd' J. O. existens pro feloniam prædict' 21

Au,

Escape, Escheat, &c.

247

Augusti Anno 13 *supradicto* apud H. *præd'* in Com. *præd.* * *evade* & *ad largum ire voluntarie* & *felonice permiserunt contra pacem dict. Dom. Regni. Coron. & Dignitat. suam, &c.*

* If 'tis for a negligent Escape, then say, *Pro defectu Negligentier,*

bonæ & diligentis Custodia evadere, &c. And instead of *Voluntarie*, say, and leave out *Felonice*.

It is necessary to set forth where the Party was taken, because upon Not Guilty pleaded to this Indictment, the *Venue* must come from the Place where the Offender was taken, as well as from that Place where he escaped.

Cro. Eliz. 200.

'Tis necessary likewise to shew for what Felony he was taken, because the Constable may traverse it; and when it was committed.

Cro. Eliz. 752.

My Lord Coke, in his Exposition upon the Statute *de Frangentibus Prisonam*, is of Opinion, That the Gaoler shall not answer for a Voluntary Escape until the Prisoner be attainted. 2 Inst. 592.

Escheat.

THIS is a casual Profit which happens to the Lord by chance and unexpected, and 'tis usually by one of these Means:

§. *Aut quia* { *Suspensus per Collum.*
 Abjuravit Regnum.
 Utilegatus est.

Estrey.

THIS is where any Beast cometh into a Lordship, and none knoweth the Owner; in such Case it shall be seized to the Use of the Queen, or of the Lord who hath a Title to it, either by Grant or Prescription.

If the Lord makes Proclamation in some Markets near him, the Property shall be vested in him, if the Owner doth not come and claim it within a Year and a Day after the Seisurè.

Bracton tells us, That *olim fuit inventoris de jure naturali*; but that now 'tis the Queen's, *jure Gentium*; and this Prerogative is granted to many Subjects, so that now it belongs to the Lord of the Franchise where found.

R 4

Estreats,

Estreats.

THese are the Extraits of Fines, Forfeitures and Amercements, taken out of the Rolls of the Clerk of the Peace; of which he makes Two Parts, and delivers one to the Sheriff, the other to the Barons of the *Exchequer*.

Estreats of the Penalties for shooting in Guns, must be sent into the *Exchequer* by the Justice who examined the Matter.

The Sheriff levying the Queen's Debt, without shewing the Party the Estreats under the Seal of the *Exchequer*, must be fined, and pay treble Damages to the Party.

Issues estreated shall not be levied upon any other Person than upon him who by the Estreat ought of Right to be charged, upon Pain that every Clerk writing such Estreat, and causing it to be executed, and the Officer, shall forfeit five Marks to the Queen, and as much to the Party grieved, to be recovered by Action of Debt, &c. 27 *Eliz. cap. 7.*

The Queen's Moiety of 5 *l.* forfeited by him who shall be a Badger contrary to the Statute of 5 *Eliz. 12.* which see in Title *Badger*.

By the Statute of 2 & 3 *Phil. & Mar. cap. 8.* Stewards of Leets have Power to fine those who do not work on the Highways; and within six Weeks after *Michaelmas* they must deliver Indentures of those Fines estreated, one to the Bailiff or High-Constable of the Liberty, the other to the Constable or Church-warden of the Parish where the Offence was committed.

In Default of Presentment at Leets, the Justices, in their Session, shall fine these Defaulters; and then the Clerk of the Peace must deliver indented Estreats under his Hand and Seal as aforesaid, which shall be a Warrant to levy, &c.

Evidence. See Felonies.

THE Witnesses, &c. must be bound in a Recognizance to appear and give Evidence at the next General Gaol-Delivery; if they refuse, they may be committed, or bound to Good Behaviour.

The Wife can be no Witness against her Husband, unless she is the Party grieved; in such Case it hath been allowed.

In my Lord *Audley's* Case, which was for being Accessary to a Rape of his Wife, she was admitted as Evidence against him; and then a Distinction was made between the Case of a common Person between Party and Party, and the Case between the King and the Party upon an *Indictment*; in the first of which Cases she may not be a Witness, and in the last she may: But my Lord *Hales* was of another Opinion, *viz.* That in Felonies neither the Wife nor her Examination shall be used for or against her Husband; and that Distinction in my Lord *Audley's* Case hath since been denied to be Law. Hutt. 116.
H.P.C. 263;
Raim. 1.

But yet a Wife *de facto*, as an Heiress taken away, and by Threats prevailed on to marry the Man, shall be a good Witness against him, and if convicted upon her Evidence, shall be hang'd. *1 Vent. 243.*

An Infant may be a Witness even against his Parents indicted for Witchcraft. *Dalb. 366.*

One attainted of Perjury, though pardoned, or of Forgery or Conspiracy, is not to be a Witness; yet the Justice may bind such Witnesses to give Evidence, but he is to inform the Judge of their Credit. Yet one convicted of Felony, and pardoned, is a Witness, for the Pardon takes away both *penam & reatum.* *Godd. 188. Raim. 369. 1 Vent. 349.* So likewise if burnt in the Hand. *Stiles 388.*

A Person convicted for publishing a Libel, and another for singing a Ballad against the Government, and both sentenced to the Pillory, were Witnesses to a Will; and upon an Appeal to the Delegates they were allowed to be good Witnesses, because the Infamy arises from the Nature of the Crime, and not from the Judgment; but in this Case neither of the Offences are infamous, either by the Canon or Civil Law, (and 'tis upon those Laws that they were now to judge) tho' 'tis otherwise by the Common Law. *Levin. 3 Pars 426.*

But a Person duly set in the Pillory, is not allowed by our Law to be a Witness. *H. P. C. 263.*

If a Witness is not able to travel, the Justice may excuse his Personal Appearance, and certify his Examination at the next Assizes.

If a Felon confess the Fact, he may give Evidence against another, as well to the Jurors who shall then enquire thereof on the Behalf of the Queen, as also to those who shall pass upon the Trial of the said T. P. for the same.

In the Case of the Regicides, it was resolved, That any of the King's Council might privately manage the Evidence for the King before the Grand Jury, in order to the finding the Bill, because the King's Council are the only Prosecutors in his Cases.

7 W. 3. c. 3. In Treason working Corruption of Blood, or in Mispri-
 sion of such Treason, the Party accused is not to have a Note
 of the Witnesses Names against him, but they must be two
 lawful Persons, and both to the same Overt-Act of the same
 Treason: And therefore, if two or more distinct Treasons
 are alledged in one Indictment, one Witness to one, and
 another to another Treason, they shall not be esteemed two
 Witnesses.

And no Evidence shall be admitted to an Overt-Act,
 which is not expressly laid in the Indictment.

The Accused may make his Defence by Witnesses upon
 Oath, and may have the same Process to compel them to
 appear, as is usually granted for Witnesses against him.

By the Statute of 4 Jac. 1. cap. 1. Felonies committed by
Englishmen in Scotland, are to be tried by a Jury of *Cumberland*,
Westmorland, or *Northumberland*, and the Felon shall be admit-
 ted to have his Witnesses examined upon Oath, &c. which
 my Lord Coke tells us is a good Precedent for the Discovery
 of Truth, and to inform the Consciences of the Judge and
 Jury, for *Jurato creditur in judicio*, and that there is not
 so much as *Scintilla juris* against the Examination of such
 Witnesses upon Oath. But notwithstanding his Opinion, it
 was never allowed in Treason before the Statute of 7 Will.
 and the Practice was still otherwise in all other Felonies.

1 Annæ.

But now by another Statute, any Person produced as a
 Witness on the Behalf of a Prisoner upon Trial for *Treason* or
Felony, must be upon Oath to speak the Truth, the whole
 Truth, and nothing but the Truth; and if convicted of wil-
 ful Perjury, shall suffer such Punishment as by the Law may
 be inflicted on such an Offender.

As to what Evidence shall maintain the Indictment, these
 Things are to be observed:

1. If the Felony is laid to be committed one Day, the Ju-
 ry may find the true Day, and the Forfeiture shall relate to
 that Day.

2. If 'tis laid to be done in a certain Place, the Evidence
 may be of the Fact in another Place, but then it must be in
 the same County.

3. If the Indictment and Evidence differ in the Manner of
 the Death, then it doth not maintain it; as if a Man is in-
 dicted for Poisoning, and the Evidence is of Stabbing: But
 where they agree in Substance, tis otherwise; as if the In-
 dictment is for poisoning with one Sort of Poison, and the
 Evidence is of another.

4. Indictment, that A. gave the mortal Wound, and that
 B. and C. were present and abetting; the Evidence was, That
 B. gave the Wound, and the other were abetting.

5. So

5. So an Indictment against B. as Accessary to D. and R. and the Evidence is only, That he was Accessary to *one* of them.

6. So for Murder of *Malice forethought*, and the Evidence is of Malice only *in Law*; as killing an Officer, or without Provocation.

In all these Cases, the Evidence maintains the Indictment.

A Warrant to Summon a Witness concerning a Felon.

To the Constable, &c.

Suffex ff. **W**Hereas I have been informed, That T. B. of &c. was lately robbed at, &c. and that J. O. of &c. is a material Witness to prove by whom the said Robbery was committed: These are therefore to require you to cause the said J. O. forthwith to come before me, or some other Justice of the Peace for this County, to give such Information and Evidence as he knoweth concerning the said Offence, that such further Proceedings may be had therein as to Justice doth appertain. Given, &c.

Evidence { Maintaining
or
Not maintaining } the Indictment.

Indictment of a Felony 30 *Novemb.* and the Evidence is of another Day; the Jury may find the true Day, and the Forfeiture shall relate to it.

The Felony is laid to be committed at such a Place, and the Evidence proves the Fact at another Place in the same County, 'tis well enough.

Of poisoning with one Kind of Poison, and the Evidence is of another; or killing with one Weapon, and the Evidence is of another; this maintains the Indictment, for it agrees in Substance.

That P. gave the Wound, and that J. and R. were abetting; and the Evidence, That O. gave the Wound, and that J. and R. were present with another, and abetting, &c. 'tis sufficient.

Indictment as Accessary to two, and the Evidence proves him Accessary to one, 'tis sufficient.

For Murder, *Ex Malitia premeditata*, the Evidence was of Malice implied, as killing an Officer in Execution of Justice, &c. it maintains the Indictment.

Upon

Upon the Statute of Stabbing, the Evidence was, That the Deceased gave the first Stroke, 'tis sufficient to maintain the Indictment for Manslaughter.

But if the Indictment and Evidence differ in the Manner of the Death; as if it be for Poisoning, and the Evidence is of Stabbing; that will not maintain the Indictment.

Feme-Covert.

A *Feme-Covert* or Infant being a Witness, cannot be bound in a Recognizance to appear at Sessions; and if she is bound with her Husband, 'tis void as to her; but they may be bound by Sureties, and if a *Feme-Covert* cannot find Sureties, she shall be committed.

Examination.

THE Justices may examine Witnesses upon Oath; and by Vertue of the Statute of 2 & 3 *Phil. & Mar.* they may examine the Felon likewise, but not on Oath. *H. P. C.* 262.

*If a small Felony, then to the Sessions.

† Tho' the Party is dead; but then the Justice's Clerk should be sworn to the Examination, or the Justice himself.

This Examination must be in Writing, and it must be *certified to the next Assizes, or else the Justice may be fined by the Judge.

It may be given in † Evidence at the Trial, but 'tis not sufficient to convict, unless the Accused confess at the Trial; yet Mr. Dalton mentions a Conviction upon it without any further Evidence.

And yet in the Case of *Tony Phillips* and *Stubbs*, who were indicted for High Treason, it was resolved by all the Judges, That if a Traitor is examined before a Justice of Peace, or Privy-Councillor, and confesseth the Treason, and should afterwards deny it at his Trial, yet two Witnesses, who can prove such Confession, are good Evidence against the Party himself, who made it at his Examination, but not against any other Person whom he then accused; and that in such Case there needs not two Witnesses to prove the Criminal guilty of Treason.

So in my Lord *Morley's* Case it was held, That if Witnesses examined before the Coroner were dead, or unable to travel, and Oath made thereof, such Examination might be read, the Coroner making Oath, That they are the same, and not alter'd.

2 And. 67.

Several Persons conspired, &c. to pull down Enclosures, and to provide Armour, &c. and to go to London and join with more; and this they confessed on Examination: The Question was, Whether they should be arraigned for this Offence, because they had confessed it already? And it was held

Examination, Execution, &c.

253

held they should, and that their Confession before the Arraignment might be given in Evidence against them.

If upon Examination the Felon confesseth the Fact, the Justice should take his Name subscribed to his Confession.

And such Confession may be given in Evidence with an Oath, before whom it was made. H.P.C. 264.

Examination taken in one County, may be certified in another.

The Felon may be examined before he is committed, but not upon Oath, because *Nemo debet seipsum accusare*.

His Examination, as well as that of the Witnesses, must be certified by the Justice to the next Assizes.

The Form of the Examination of the Felon.

THE Examination of T. R. &c. taken before me, H. P. Esq; one of Her Majesty's Justices of the Peace for the County of S. on the 3rd Day of March, &c.

This Examinant saith, &c.

The Examination of the Witnesses must be taken severally, and upon Oath, thus :

The Examination of R. B. of, &c. taken upon Oath before me, H. P. Esq; *ut Prim.*

Execution, See Judgments.

IF Execution is respited by the Judge for six Weeks, and the Time expires, and then the Sessions is adjourn'd, and the Judge grants a farther Respite, 'tis good ; though by the Adjournment, the Commission of Gaol-Delivery is determined. *Dyer 205.*

Extortion,

IS an Offence, where an Officer by Colour of his Office takes Money, or any other Thing of Value not due, or more than is due, or before 'tis due : And in a large Sense, 'tis where any Person is oppressed by an extorting Power, or under a Pretence of Right. 1 *Inst.* 368. b.

Arch.

Extortion.

- Archdeacon } Is guilty of this Offence, taking more than his Fees by Colour of his Office, or any Fees or Reward for Expedition, or exacting an Oath, or any other undue Thing.
- Attorney } Taking 1 l. 3 s. of his Client, *Extorsive contra formam Statuti*, which must be the Stat. of 3 Jac. cap. 7. which gives the Client Costs and treble Damages, where an Attorney demands by his Bill more than his due Fees and Disbursements; the Question was, Whether this is to be recover'd by Action or Information? And by some Opinions an Information will lie. *Sid. 434.*
- Bailiff } Of a Hundred, taking 50 s. *colore Officii*, without expressing particularly for what: After Verdict this was held sufficient, by Reason of the Words *colore Officii*; but it had been otherwise upon Demurrer. *Sid. 91.*
- Bailiff } Bailiff to a Sheriff, indicted at Sessions for taking 20 s. of T. P. *Extorsive colore Officii*, was committed, and pleaded, and was tried the same Day in Sessions and convicted, and upon a Writ of Error the Judgment was reversed, because a Man cannot be indicted and tried at the same Sessions. *Cro. Car. 438. Jones 379, 380.* But the Damages are to be recover'd by Action.
- Clerk of Affize. } Taking more than 4 d. for an Arrest, forfeits treble Damages to the Party grieved, and besides 40 l. between Queen and Prosecutor, *per 23 H. 6. cap. 10.* But the Jury must find the single Damages, and then the Justices may treble them. *Sid. 91.*
- Church-wardens } Information against him for taking more than his Fees, was ordered to be tried at Bar. *Sid. 420.*
- Coroner } Taking *colore Officii sui falso corrupto & extorsive* of T. P. a Silver Tankard for the Place of a Gallery-keeper in the Church; the Court would not quash the Indictment, but ordered it to be tried. *Sid. 307.*
- Gaoler } Taking more than his Fees, or refusing to view the Body before he had 6 s. 8 d. for himself, and 2 s. for his Clerk; he was committed, &c. 3 Inst. 149.
- Gaoler } Taking more than his Fees.

Justice

Justice of the Peace. { He was convicted of Extortion, fined 1000 Marks, committed during the Queen's Pleasure, bound to his Good Behaviour for a Year, and order'd to acknowledge his Offence publickly at the next Assizes, and turned out of Commission.

Ordinary. { 'Tis Extortion in him to take any Thing for an Admonition or Probate of a Will, where the Goods of the Deceased are not of the Value of 10 Marks, or to take more than 3 s. 4 d. where the Goods exceed not 30 l. or take more than 6 s. 8 d. when the Goods exceed 30 l. and are not of 40 l. Value; or to take above 10 s. when the Goods amount to 48 l. or above, or any Thing for a Mortuary where 'tis not payable by Custom. 21 H. 8. cap. 6.

Sheriff { Taking more than his Fees, or any Thing of a Constable for bringing a Felon to Gaol. 'Tis Extortion in him to take 60 l. to execute a Judgment in Dower. 1 Keb. 743. but if he is acquitted, no new Trial shall be had. 2 Keb. 404.

Spiritual Court. { Extortion there, is punishable at Common Law. Palm. 318.

Indictment against a Coroner for taking Excessive Fees.

Suffex ff. *Ur', &c. quod J. O. de H. in Com' præd' Generosus, 30 die Decembris, Anno Regni, &c. unus Coronator. dictæ Dom' Reg' in & pro dicto Com' adtunc existens apud H. præd' in Com' præd' colore Officii sui prædicti extorsive cepit pro feodo suo 30 s. de quodam T. P. in dicto Com' Generoso, in & pro executione Officii Coronatoris præd' super visum corporis A.C. nuper de H. præd' qui quidem A.C. vicesimo nono die Decembris præd' apud H. præd' per quandam carrucam in & super caput ejus curren' per infortunium occisus fuit, in magnum dictæ Dom' Reg. contemptum & contra pacem & Coron. suas, &c.* The same Form may serve against a Bailiff, mutatis mutandis.

Against a Bishop's Register.

Suffex ff. *Ur', &c. quod T. B. de L. in Com' præd' Generosus, 30 die Decembris, Anno Regni, &c. adtunc Registrarius reverendi in Christo Patris T. tunc permissione Divina Ciceroniensis* 31 H. 8. c. 6. Fine 10 l. and Imprisonment.

Strensis Episcopi existens apud L. in Com' præd' colore Officii sui falsè corruptive & extorsive cepit de quodam J. O. de L. præd' Tonsore 40 s. legalis moneta Angliæ pro feodo ipsius T. B. pro scriptione probationis Testamenti sive ultima voluntaria ejusdam T. M. qui quidem T. M. apud L. præd' infra Dioecesin dicti T. Epi. primo die Novembris ult' præterit' moriebatur ubi revera dictum testamentum actunc & ibidem allatum fuit dicto Registrario per præd' J. O. in Pergameno scriptum & ubi omnia bona & catalla jura & credita dicti T. M. tempore mortis sue præd' non excedebant summam 5 l. & ubi etiam tota scriptura probationis Testamenti præd' per præfatum Registrarium sic ut præfertur fact' non continebat in se 30 lineas quarum quæque linea erat' decem pallicium in longitudine in magnum dictæ Dom' Reg' contemptum ac contra formam Statuti, &c.

Against Extortion in a Gaoler.

Sussex ff. Jur', &c. quod J. O. de paroch' H. in Com' præd' per J. T. R. Constabularium ejusdem Paroch' virtute ejusdam Warranti sub manu & sigillo R. B. actunc & adhuc un' Justiciar' Dom' Reg' ad pacem pro Com' præd' conservand' assign' & eidem T. R. direct' captus fuit 30 die Decembris, Anno, &c. pro suspitione ejusdam felonie per ipsum J. O. perpetræ fuisse & per ipsum R. B. eodem die & Anno commissus fuit J. L. custodi Gaule præd' Dom' Reg' Com' præd' sub custodia ipsius J. L. pro suspitione præd' salvo custodiend' idemque J. O. in prisona illa sub custodia præd' J. L. a præd' tempore quo commissus fuit ad prisonam præd' per unum mensem extunc proxime sequentem pro eadem suspitione sub custodia a præd' J. L. detentus fuit prædict' tamen J. L. statutum præd' & panam in eodem content' minus ponderans decem libras legalis moneta Angliæ de eodem J. O. pro easiamento (Anglice, Ease) & favore in Gaola præd' per idem tempus habend' die, &c. Anno, &c. apud H. &c. recepit in contemptum Dom' Reg' nunc & contra formam Statuti præd' & contra pacem, &c.

Indictment against a Bailiff of a Hundred, for taking Fees to excuse a Freeholder from appearing at the Assizes or Sessions.

Sussex ff. Jur', &c. quod J. T. nuper de L. in Com' S. Yeoman, existens Ballivus Hundredi de H. in Com' præd' 7 die Maii, Anno Regni, &c. apud L. in Com' præd' pretextu & colore Officii sui præd' injuste & extorsive de quodam T. K. un' liberorum tenen' in & de Com' præd' quinque solidos cepit & extorquebat pro excusation' attendens sive comparens præd' T. K. tempore Assisarum extunc prox' tenend' in & pro Com' præd' ubi revera præfat' T. K. in nullo jur' pannello per Vicecomitem Com' præd' retornat' fuit, ubi etiam revera nulla talis pecunia summa pro feodo præfat' J. T. pro exten-

Extortion.

457

excusatione attendent. siue comparent. (Anglice, the Appearance) pradiſt. T. K. ad Affixas pradiſt. debir. fuit praſat. J. T. in pernitioſum exemplum aliorum Malefactorum ad grave dampnum ipſius T. K. & contra Pacem diſt. Dom. Regni. Coron. & Dignitat. ſuas, &c.

Againſt an Informer for taking Money.

Suffex ff. J. U. R. &c. quod. R. G. nuper de, &c. in Com. Si Yeoman, modo & per duos Annos jam ult. elapſ. communis Informator exiſten. ſeptimo die Maii, Anno Regni, &c. apud H. in Com. pradiſt. decem ſolidos in pecuniis numeratis de quodam J. R. de, &c. recipiebat & extorquebat pretextu quod idem J. R. exercuiſſet & uſus fuiſſet Artem ſive Myſterium Piſtoris non exiſtens Apprentic. per ſpatium ſeptem Annorum ad grave dampnum ipſius J. R. in malum exemplum aliorum in huiusmodi caſu deliquen. & contra Pacem diſt. Dom. Regni. Coron. & Dignitat. ſuas, &c.

FEES.

- | | |
|---|--|
| <p>Bialiff,</p> <p>Bail-Bond—</p> <p>Clerk of the Peace,</p> <p>Coroner,</p> <p>Gaoler,</p> | <p>TAking more than 4 d. for an Arreſt, forfeits 40 l. 13 H. 6. cap. 10. and treble Damages to the Party grieved; the 40 l. to be divided between Queen and Proſecutor.</p> <p>Taking more than 4 d. like Punishment.</p> <p>For enrolling a Bargain and Sale of Lands not exceeding 40 l. per Ann. 12 d. if it exceed that yearly Value, then 2 s. 6 d. and no more; and for Licence or Recognizance for Badger, Drover, Lader, Kidder, and Registering it, 2 s.</p> <p>May take 13 s. 4 d. of the Goods of the Party ſlain; and if he hath none, then he may take it of the Town where the Deceased was killed if in the Day-time, and the Perſon who committed the Fact ſuffered to eſcape.</p> <p>If he take more than 4 d. of the Party committed, forfeits ut prius, as in the Caſe of a Bialiff.</p> |
|---|--|

Justice

| | | <i>l. s. d.</i> |
|-------------------|---|-----------------|
| | For Recogn. of the Peace | 0 2 0 |
| | For Recognizance to bail | 0 2 0 |
| | a Prisoner, ———— | 0 2 0 |
| Justice of Peace, | For a <i>Superfedeas</i> of the Peace | 0 2 0 |
| | Warrant of the Peace ———— | 0 2 0 |
| | Release of the Peace ———— | 0 2 0 |
| | Warrant ———— | 0 6 4 |
| | Recognizance of the Ale- | |
| | house-keeper ———— | 0 1 0 |
| | Sealing Bushels and other Measures | 0 0 1 |
| | Sealing an Hundred Weight, and so | |
| | proportionably ———— | 0 0 1 |
| | and if he takes more, forfeits 40 s. be- | |
| Mayors, | tween the Queen and the Party grieved; | |
| | which Default, Justices of the Peace have | |
| | Power to hear and determine. 7 H. 7. | |
| | <i>cap. 3.</i> | |
| | And by 11 H. 7. <i>cap. 4.</i> Two Justices, <i>Qu-</i> | |
| | <i>rum unus</i> , to hear and determine the De- | |
| | faults of Mayors, &c. | |
| Pounding. | Taking above 4 d. for pounding of a Distress, | |
| | forfeits 5 l. to the Party grieved. 1 & 2 Ph, | |
| | & Mar. <i>cap. 12.</i> | |
| Sheriff, | For Arresting, 20 d. if he takes more, forfeits | |
| | as a Bailiff, <i>ut prius</i> . | |

Felo de se,

IS one who committeth Felony by murdering himself voluntarily.

It has been the Opinion of learned Men, That a Person who is *Compos Mentis*, cannot be guilty of so much Malice towards his Person, which may occasion him wilfully to kill himself; because naturally the Intentions of Men aim at what is good for themselves, and at what conduceth to their own Preservation; and therefore 'tis to be presumed, that where a Man killeth himself, he is not *Compos Mentis*.

The Person who is guilty of this Offence, must be,

1. Of the Age of Discretion.
2. *Compos Mentis*.
3. The Act must be voluntary.

4. Death

4. Death must ensue within a Year and a Day after the Stroke or Wound; otherwise no Forfeiture of Goods, &c. incurrerth.

But in some Cases the Act may be involuntary: As, if I am assaulted, and draw my Sword to defend my self, and happen to fall down, and the other pursuing his wicked Intentions to destroy me, falls upon my Sword and kills himself, he is *Felo de se*.

But if I stand upon my Defence without being assaulted, and am only in Danger thereof, and another runs upon my Sword and kills himself, he is not *Felo de se*.

This must be by the Oath of Twelve Men before the Coroner *super visum Corporis*; and when his Inquisition is returned and filed, 'tis not traversable. *S. d. 90, 1 Vent. 278. contra.* Contbl. tion.

If the Body cannot be found, &c. then the Enquiry may be before the Justices in Sessions; and this is traversable.

3 *Inst. 35.*

So if the Enquiry be in B. R. in the same County, 'tis traversable by Executor or Administrator.

And till Conviction, no Goods are forfeited.

The Coroner's Inquest found, That *seipsum felonice submersus fuit*, he was ordered to attend B. R. to amend it; for it should be *jecit seipsum in aquam*, &c. *Sid. 259.*

If a Presentment is made before a Coroner, that a Man was *Felo de se*, and that he had Goods in the Possession of S. this Presentment must be certified into B. R. upon which, Process out of the Crown-Office issues against S. and 'tis continued till he is outlawed. 2 Leon. 200.

This is of all the Goods and Chattels which the Party had at the Time of the Stroke given, or at any Time since; for it relates to that Time, and not to the Death. Forfeiture.

And yet there is an Opinion in my Lord Dyer, That if Money is owing to one, who is *Felo de se*, upon simple Contract, and not on *Specialty*, the Debt is not forfeited; because such Debtor may wage his Law with the Queen. Dyer 262.

A Debtor was bound with Sureties to pay the Money, and made a Bargain and Sale to the Sureties of Goods, to the Value of the Debt, to indemnifie them; in which Deed there was a Covenant, That if the Debtor saved them harmless, that the Bargain should be void, and that in the mean Time he should have the Use of the Cattle: Before the Debt became due, the Debtor killed himself, and the Sureties seized the Cattle; but it was held, the Lord Almoner should have them, or the Money for which they were sold, tho' the Property was in the Vendees; but then he ought to discharge them from the Debt. Dyer 160.

Whelitis
Anquit-
rend.

4. a. 1. don.

Not granted but where a Misdemeanour in the Coroner.
Vint. 182, 352.

Of all Offences, &c. except Murder, a *Felo de se* is not under this Exception, because there is a Difference between killing ones self and another; for the first is against the Law of Nature, the other against the *Mosaical Law*, by which Vengeance is to be taken against the Man-slayer; but no Vengeance can be had against one who is *Felo de se*; therefore his Goods, &c. are forfeited to the Queen for depriving her of the Benefit of a Subject. *Levinz. 1 Part 8.*

An Inquisition taken before a Coroner upon the View of the Body.

Suffex ff. Inquisitio indentar. capta apud L. in Com. predict. 31 die Decembris, Anno Regni, &c. coram Alexandro Luxford, Gen. un. Coronat. dict. Dom. Regina in Com. predict. super visum corporis cujusdam W. G. de H. in Com. predict. Labourer, ibidem mortui jacen. per Sacramentum (of the Jury) qui dicunt super Sacra. sua quod predict. W. vicesimo nono die Decembris, Anno Regni, &c. supradicta circa horam quintam post meridiem ejusdem diei Deum præ oculis suis non habens, sed Instigatione Diabolica seductus in quadam Domo cujusdam R. N. Gen' apud H. in Com. predict. adtunc & ibidem solus existens. cum uno cingulo corii pretii unius denar. quod ipse tunc & ibidem in manibus suis habuit & unum finem inde circa collum suum adtunc & ibidem posuit & circa trabem alter. finem inde ligavit seipsum adtunc & ibidem voluntarie & felonice suspend. suffocabat & strangulabat, & sic Jur. predict. dicunt super Sacram. suum quod predict. W. C. modo & forma predict. adtunc & ibidem voluntarie & felonice ut *Felo de se* seipsum murderavit contra Pacem dictæ Domine Regina Coron. & Dignitatem suas. Ac quod idem W. nulla habuit bona sive catalla. terras sive tenementa. In cujus rei Testimonium tam præfat. Coronator quam Jur. præd. presentibus sigilla sua apposuerunt. Dat. D. e, Anna & Loco supradictis.

If it is for cutting his Throat, then after the Year of the Queen, as in the former Precedent, say,

A pud L. predict. in Com. in & super seipsum in pace Dei & dict. Regina adtunc & ibidem existens. adtunc & ibidem felonice voluntarie & ex malitia sua præcogitata insultum fecit & quod præd. W. G. cum quodam cultello valoris unius denar. quod præd. W. G. in manu sua dextra adtunc tenuit & habuit seipsum in & super Guttur ipsius W. adtunc & ibidem felonice voluntarie & ex malitia sua præcogitata percussit & pungit datus sibi ipsi adtunc & ibidem cum cultello predict. in & super Guttur suum unam plagam

gam mortalem latitudinis quatuor pollicum & profunditatis unius pollic. de qua quidem plaga mortali præd. W. G. à præd. vicesimo nono die Septembris, Anno decimo tertio supradictæ usq; primum diem Octobris tunc prox sequen. apud L. præd. in Com. præd. languēbat & languidus vixit qui quidem W. G. præd. prima die Octobris, Anno 13 supradictæ apud L. præd. in Com. præd. de plaga mortali præd. obiit, & sic, &c.

If it be upon some sudden Sickness or Distemper, then after per Sacrum. of the Jury;

QUI dicunt super Sacrum. suum quod ita accidebat apud H. prædict. in Com. præd. 31 die Decembris, Anno, &c. quod præd. W. G. egrotabat apud H. præd. de Febri, à quinto die Decembris ult' præterit. usq; ad decimum diem ejusdem mensis extunc prox' sequen. quo quidem decimo die ex Febri prædict. & visitatione Dei adtunc & ibidem præd. W. G. circa horam octavam ante meridiem ejusdem diei obiit, & Juratores præd. dicunt quod prædict. W. G. ex nullo alio morbo, aegritudine aut infirmitate ad mortem suam devenebat, sed hac est causa mortis suæ, & non aliter. In cuius, &c.

For killing another in his own Defence.

Inquisitio, &c. qui dicunt super Sacrum. suum quod ubi quidam G. L. nuper de, &c. in Com. præd. Gen. fuit in pace Dei & dict. Dom. Regin. apud L. præd. 31 die Decembris, Anno, &c. circa horam secundam post meridiem ejusdem diei venit prædict. H. B. & ex malitia sua præcogitata in ipsum G. L. adtunc & ibidem insultum fecit, & ipsum ibidem verberasse & interfecisse conatus fuit continuando insultum prædict. à domo cujusdam W. B. in L. prædict. usq; quendam locum voc. &c. in Com. præd. & idem G. L. videns ipsum H. B. tam malitiose disposit. fugit usq; ad quendam murum in dicto loco vocat. &c. quem murum ob metum mortis suæ evadere non potuit, sicq; idem G. L. in Salvatione vitæ suæ erga præfat. H. B. remanebat ad se defendend. erga ipsum H. B. & cum quodam Gladio pretii unius soliti quem præd. G. L. adtunc & ibidem in manu sua dextra tenebat, in defensione sua eundem H. B. super dextram partem pectoris sui percussit & pupugit dant. tunc H. B. adtunc & ibidem quandam plagam mortalem latitudinis unius pollicis & profunditatis trium pollicum de qua quidem plaga mortali præd. H. B. à præd. 31 die Decembris usq; quintum diem Januarii extunc prox. sequen. apud L. præd. in Com. præd. languēbat, & languidus vixit qui quidem H. B. præd. quinto die Januarii. Anno, &c. supradictæ apud L. prædict. in Com. præd. de plaga mortali præd. obiit, & sic idem G. L. ipsum H. B. adtunc & ibidem se defendend. interfecit. In cuius rei Testimonium, &c.

Felonies. Vide Larceny and Outlawry.

MY Lord Coke tells us, this Word is derived from the Latin Word *Fel*, or from the old Saxon Word *Fell*; the one signifying *Gall*, and the other *Fierce*; and his Reason is, because either of those Words are suitable to the Crime, which is always intended to be done with a *bitter* or *fierce* Mind.

This makes me reflect on what my Lord *Verulam* wrote to that Great Lawyer, *viz.* That when he spoke in the Law, (which he calls his own Element) he had no Equal; but when he wandered (as he tells us he often did) he was very much out of the Way: And this appears by his Derivation of this Word; and in many more Instances which I could mention.

The learned Sir Henry Spelman gives us a different, but a true Account of this Word, (*viz.*) That 'tis derived from the Saxon Word *Rah*, which we now call *Ré*, and which then signified a Reward or Estate; and from the German Word *Lon*, which in *English* is *Price*; so that this was a Crime which was punished with the Price (that is, the Loss) of his Estate.

For in those Days, there was a Pecuniary Punishment for all Crimes, which was abolished by Hen. 1. and instead thereof he appointed Hanging for Felony.

Felonies are { By Common or By Statute } Law.

Felonies at Common Law are.

Chance-medley.

Dredand.

Felo de fe.

(1.) Against *Frío de se.*
the Life of a Manlaughter.

Manlaughter.

Manlaughter, ex necessitate.

Se defendendo.

Murder.

(2.) Against the Goods. } Larceny:
Robbery

Larceny:

Robbery.

Piracy

(3.) Against the Habitation.

Burglary.

Burning.

(4.) Against public Ju-
stice. } Breach of Prison.

Breach of Prison

Felonies

Felonies by Statute Law are,

Stealing of Goods which by Agreement he is to use, or shall be let to them in Lodgings. 3 & 4 W. & M.

Delivering Silk by a Throwster to a Man to work, and he steals it, this was Felony before that Statute: So the Delivery of Plate to a Butler, or Sheep to a Shepherd, and they steal it; because the Property was still in the Owner. Keeling 35.

Imploying the Queen's Armour, Munition, or Ordinance, to the Value of 20 s Prosecution must be within a Year, loseth Lands but during Life, no Corruption of Blood, the Wife shall have Dower. 31 Eliz. cap. 4. This cannot be determined in Sessions.

An unlawful and rebellious Assembly of any Persons to the Number of Twelve, or above. 1 Maria. cap. 13. expired.

Acknowledged in the Name of another not privy or consenting. 21 Jac. cap. 26.

But if taken *de bene esse* at a Judge's Chamber, and not filed, no Felony. *Sid.* 90.

Concealing the Death of it, unless the Mother proves by one Witness it was dead-born. 21 Jac. cap. 27.

With Man or Beast, there must be Penetration & Emissio, &c. 25 H. 8. cap. 6. revived by 5 Eliz. cap. 7. No Clergy.

Burglary—*Vid.* Robbery.

Rick or Stack of Corn, Hay or Grain in the Night-time, or Barns or Out-houses. 21 & 22 Car. 2.

But where a Man was indicted, for that he being possessed of an House, did felonically set it on Fire, with an Intent to burn his Neighbours Houses; this was adjudged no Felony, but a Trespass. Keeling 29.

Hunting in them in the Night-time with painted Faces. 1 H. 7. cap. 1.

Stolen from the Tents in the Night. 22 Car. 2.

Stealing Goods out of it to the Value of 5 s, tho' not broke open, or assisting any Person to do it either by Day or Night. 10 & 11 W. 3 H. 5. cap. 1. 2 H. 6. cap. 9. Clergy.

- Blanching Copper or Silver for Sale, or mixing blanch'd Copper with Silver, or knowingly buying or selling it, or offering it to Sale, or any malleable Composition of Minerals or Metals heavier than Silver, and looking like Standard-Gold; paying or putting off counterfeit'd Mill'd Money, or unlawfully diminish'd (and not cut in Pieces) at a lower Rate than its Denomination doth import.**
- Coin, &c.** No Corruption of Blood, Loss of Dower: Prosecution must be within three Months, &c. continue till next Sessions of Parliament. 8 & 9 Will.
- Deed,** Enrolled in the Name of another not privy or consenting. 21 Jac. 1. 26.
- Eyes,** Putting them out, 22 & 23 Car. 2. or cutting out the Tongue; no Clergy.
- Egyptians,** Above Fourteen Years of Age remaining here a Month. 1 & 2 Phil. & Mar. cap. 4. 5 Eliz. cap. 20. no Clergy.
- Escape.** Prisoner suffered voluntarily to escape being under an Arrest for Felony, 'tis Felony in the Officer.
- Etchiquier-Bills.** To counterfeit or forge them, or to demand Money on them, knowing them to be counterfeit. 8 & 9 Will.
- Fine.** Acknowledging it in the Name of another not privy or consenting. 21 Jac. cap. 26. Sessions have no Jurisdiction of this Offence. See Counterfeits.
- Forging** A Deed, after a former Conviction for the like Offence. 5 Eliz. cap. 14. no Clergy.
- Forrest,** Hunting in it unlawfully by Night with Painted Faces. 1 H. 7. cap. 1.
- Hawks.** Stealing them, or finding and concealing them, and not bringing them to the Sheriff to be proclaimed. 37 Ed. 3. cap. 19. Clergy.
- Horses,** Destroying or killing them in the Night-time; but wounding them only, forfeits treble Damages.
- Hunting,** Hide Chases, Forrests, Warrens. See *Deer-stealing and Hunting*.
- Jesuit.** Receiving, retaining or maintaining him knowingly. 27 Eliz. cap. 2. no Clergy.

King. } Imagining or conspiring to kill him, or any of his Council. 3 H. 7. cap. 14. no Clergy.

Limb } Cut off or disabled, with an Intention to maim or disfigure the Person. 22 & 23 Car. 2. no Clergy.

Maimed — *Vide* Limb.

(1.) A second Husband or Wife, the first living, but then the Man must be above 14, and the Woman above 12; if under that Age, and marry, and disagreeing afterwards, may marry again.

Marrying } (2.) Either of them being absent above seven Years beyond-Sea, tho' Notice; but if in England, must not have Notice that the Party is living.

(3.) Divorce *a mensa & thoro* may marry: As *Causa Adulterii*, which was Middleton's Case; or *causa Sævitie*, which was Rook's Case.

(4.) After a Sentence of Nullity in the Ecclesiastical Court, in these three last Cases may marry again. 1 Jac. 11. Clergy.

Mill'd-Money — *Vide* Coin.

Money — False Imported. 17 Ed. 3.

Nose. } Slitting or cutting it. 22 & 23 Car. 2. no Clergy.

Ordinance — *Vide* Armour.

Poisoning. } Wilfully Poisoning, if the Party die within a Year and a Day. 1 Ed. 6. cap. 12.

Popish Priest. — *Vide* Jesuit.

Prison. — Breaking it by a Felon. 3 H. 7. cap. 14.

This was Felony at Common Law; but by the Statute of W. 1. cap. 13. made a Misdemeanour only, punishable by Fine and Imprisonment: But 10 Years afterwards, by the Statute of W. 2. cap. 34. it was made Felony again.

Rape. } If the Woman is under 10 Years, tho' she consent, *per* 18 Eliz. cap. 6. If above 10 Years, and not consenting to do the Act, though she doth consent after 'tis done.

But in this subsequent Consent the Husband may appeal. 6 Rich. 2. cap. 6. no Clergy. 18 Eliz. cap. 7. upon Conviction, Confession, or Outlawry.

In Michaelmas-Term, 14 Eliz. a Scotchman was indicted for Rape upon a Girl of seven Years old, and no more, and upon the Evidence of credible Witnesses was found Guilty; but

Dyer 304.

but the Court very much doubted whether the Fact could be committed upon such a young Girl: And this was the Reason of making that Statute 18 Eliz. declaring it Felony to ravish a Girl under 10 Years of Age, tho' consenting to the Act.

Recovery. { Acknowledging it in the Name of another, not privy or consenting. 21 Jac. 26.

Recognizance. *Vide Recovery.*

Record. { Stealing them. 8 H. 6. cap. 12. Clergy. Sessions have no Jurisdiction of this Offence.

Of a Prisoner taken out of any pretended Privileged Place, and he who made the Rescous not paying 500*l.* within a Month after Conviction, must be transported, and if he return within seven Years, 'tis Felony. 8 & 9 W.

Rescous

House, Barn, or Stable, in the Day-time, and taking in Value 5*l.* tho' no Body within, and breaking in the Night-time, and putting the Owner, &c. in Fear. 39 Eliz. cap. 15.

Robbery.

Sea.

{ Subjects in passing over the Sea to a Foreign Prince, in order to serve him. 3 Jac. cap. 4.

{ Other than Apprentice, going away with or imbezelling the Goods of his Master, in Value 40*l.* delivered to him, &c. 21 H. 8. cap. 7. After Decease of his Master, spoiling Goods, &c. 33 H. 6. cap. 1. and not appearing in B. R. upon Proclamation, he hath Clergy by the Statute of 1 Ed. 6. cap. 12. Receiving Master's Rents, and going away, not within the Statute.

Servants above Eighteen Years old.

If I deliver a Bond to my Servant to receive 20*l.* which he receives, and goes away with the Money; this is not within the Statute, because a Bond is not properly Goods, but a Chose in Action: So if I deliver Goods to my Servant to sell in a Market; which he doth, and runs away with the Money; 'tis not within this Law, because he had not the Money by my Delivery: But if one Servant delivers Goods to another Servant, and he runneth away with them, this is Felony, because the Delivery of the Servant is the Delivery of the Master. Dyer 6. b.

Sheep.

{ Sending them beyond-Sea, after a former Conviction. 8 Eliz. c. 3. Clergy. Destroying or killing them in the Night-time. 22 & 23 Car. 2. cap. 7.

Shop.

- Shop.** Breaking it in the Day-time, and taking to the Value of 5 s. 3 & 4 W. & M. Tho' he doth not break it in the Day-time, yet if he take the Value of 5 s. 11 Will.
- Soldier** Wandring. 39 Eliz. cap. 17. no Clergy.
- Stable.** Departing from a Captain without Leave, 18 H. 6. cap. 19. 2 Ed. 6. cap. 2. no Clergy.
- Stamps.** Stealing Goods in Value 5 s. out of it, tho' not broke open, or assisting to do it by Day or Night. 10 & 11 Will.
- Stealing** Counterfeiting or selling Vellum, Paper, &c. with such counterfeit Stamp. 9 & 10 W. no Clergy.
- Statute.** Any Goods, which by Contract or Agreement the Party was to use; Felony, 3 & 4 W. & M. now made perpetual, per 6 & 7 W.
- Tongue.** Acknowledging it in the Name of another, not privy or consenting. 21 Jac. cap. 26.
- Transporting** Cutting it out maliciously. 5 H. 4. cap. 5. 22 & 23 Ger. 2.
- Ware-house.** A Rogue, and he returning without Licence. 39 Eliz. cap. 4. 1 Jac. 1. cap. 7, 25. Clergy.
- Warren.** If burnt, no Clergy.
- Of Silver, 17 Ed. 3. Clergy.
- Breaking it in the Day-time, belonging to a Dwelling-house, and taking to the Value of 5 s. 3 & 4 W. & M. though not actually broken, &c. 11 Will. no Clergy.
- Hunting in it in the Night-time with painted Faces. *Vide* Forrests.
- In the first Degree:
1. By Invocation or Conjurat[i]on of Evil Spirits.
 2. Consulting, entertaining or employing them.
 3. Taking up a dead Person to be employed, tho' not actually used in Charm or Witchcraft.
 4. Doing any Witchcraft, Inchantment or Charm, &c. whereby any Person is killed, destroyed, consumed, or lamed; no Clergy. 1 Jac. cap. 12.
- Witchcraft,** In the second Degree.
- By taking upon them by Inchantment, Charm, &c. to tell where Treasure is, or where Goods lost, &c. may be found, or to provoke unlawful Love, or by destroying Goods or Cattle, or using Witchcraft to hurt

Noy 85.

hurt any Person, tho' not done: The first Offence is Imprisonment for a Year, and Pillory; and being convicted thereof, and receiving Judgment, and offending again, 'tis Felony. 1 Jac. c. 12.

Dr Lamb was indicted, for that he used *quasdam malas & execrabiles & diabolicas Artes*; and the Indictment was quashed, because there was not a Word in it which signified Witchcraft: It may be expressed by the Word *Incantatio*. Lat. ch. 158.

Taken away against her Will, and marrying her; but then she must have Lands or Goods, &c. or be an Heir Apparent, and must be married or defiled. 3 H. 7. cap. 2.

Woman. Taking in one County and marrying in another; Trial must be where married; it cannot be in Sessions.

See Title Woman. Privy to Marriage, and not to the Force, not Guilty; marrying with Consent, but under the Force, Felony, 39 Eliz. cap. 2. no Clergy.

The Indictment for a Felony in stealing Goods, must be *quod Felonia cepit & asportavit*. Now if Goods are delivered to a Carrier to carry to L. and he carrieth them to another Place, and there converteth them to his own Use, this is Felony; for tho' it cannot strictly be said, that he *Felonia cepit* those Goods, yet the carrying them to another Place, and there disposing of them to his own Use, sheweth that he always intended to steal them, and not to take them upon the Contract or Agreement of the Owner.

So if one come to a Market pretending to buy a Horse, and the Owner giveth Leave to ride the Horse to try his Paces, and he rideth away; this is Felony: So if I deliver Goods to a Porter to carry to such a Place, and he carrieth them to another Place, and there openeth and disposeth of them; this is Felony.

The Law is the same if the Goods were carried to the Place appointed, and then embezzeld; because when they are brought to that Place the Contract is determined, and the Possession is revested in the Owner, and so being taken away afterwards, 'tis Felony. Keeling 82. 83.

To encourage Men to bring Offenders to Punishment, there is a Law, that apprehending a Felon for stealing to the Value of 5 s. out of a Coach-house, Stable or Ware-house, either in the Night or Day-time, and the Person being convicted,

10 & 11 Will.

victed, such *Apprehender* shall have a Certificate under the Hand of the Judge or Justices, before whom such Conviction is had, certifying the same, and also within what Parish the Felony was committed, and the Person so taking or discovering the Felon; and the Judge or Justices shall direct and appoint the Certificate into so many Shares to be divided among the Persons concern'd, if any Difference shall arise amongst them touching their Right to the said Certificate.

This Certificate may be assigned once and no more, and the Original Proprietor or his Assignee shall be discharged of all Parish-Duties wherein such Felony shall be committed.

It must be enrolled by the Clerk of the Peace of that County in which it shall be granted.

And if the Person happen to be killed in taking a Felon, he that has Right to his Personal Estate shall have the Certificate. And as a further Encouragement to the discovering a Felon, 'tis Enacted, That if any Person shall commit *Burglary, House-breaking, or Felony in stealing Horses, or any Money, Ware or Goods, and being out of Prison, shall discover two more who have committed such Felony, or caused two more to be discovered, apprehended and convicted, such Discoverer shall have the Queen's Pardon, which shall be a good Bar to any Appeal to be brought for the same.*

And to make the Punishment of Evil Persons more visible, those who are convicted of Theft or Larceny, for which the Benefit of Clergy is allowed, shall be burnt with the usual Mark in the *Left Cheek*, near the Nose, in the Presence of the Judge.

But this Punishment had not its desir'd Effect; for it did not deter Offenders from committing such Crimes, but on the contrary, made them desperate, being by such an open and visible Mark made incapable to be trusted in any Service and Employment to get a Livelihood: Therefore by the Statute 5 *Annæ*, that Act was repealed as to this Punishment, and the Offender was to be burnt in the Hand as before. And as a farther Punishment, the Judge or Justices, before whom the Party shall be convicted, may commit him to the House of Correction, or publick Work-house, there to be kept without Bail not less than six Months, nor above two Years from the Time of such Conviction, and to work all that Time, or be whipped.

5 *Annæ*

And if such Person escapes, and is taken, two Justices of Peace (*Quorum unus*) where he was retaken, may remand him to the House of Correction, there to remain without Bail not less than a Twelve-Month, and not exceeding Four Years, to be accounted from such Retaking; and if the Keeper of the House of Correction shall neglect

left to keep him at hard Labour, and correct him, then Proof thereof being made by Oath of one Witness before a Judge of Assize, he may remove him from his Office.

* 5 Annz.

And for a due Encouragement to be given to such who shall vigorously endeavour to discover and apprehend Malefactors; an Act was made in the same * Year, That he who after the 10th of May 1707, shall apprehend and take one guilty of Burglary, or felonious breaking and entering an House in the Day-time, and shall prosecute him to Conviction, shall, over and above the Reward which he is entitled unto by the Statute 10 Will. receive the Sum of 40 l. within one Month after such Conviction, to be paid by the Sheriff of the County where the Offence was committed, upon tendering a Certificate unto him, sign'd by the Judge before whom the Offender was convicted, certifying the same, and in what Parish it was done, and that the Felon was taken by the Party claiming the Reward.

And if any Dispute should arise between the Persons who shall take a Felon concerning the Right to such Reward, it shall be in the Power of the said Judge to proportion the same by his Certificate amongst them; and if the Sheriff shall fail in paying the said Sum, then he forfeits to the Party grieved double the Sum he ought to have paid, to be recovered by Action of Debt, &c. with treble Costs.

And if any Person shall be killed in endeavouring to take such House-breaker, then his Executor or Administrator, upon Certificate from the Judge or Justice of Assize of the County where the Fact was committed, or the two next Justices of the Peace, that the Person was killed, shall receive 40 l. of the Sheriff where the Fact was done, and in Default of Payment, then double that Sum, with treble Costs.

The 40 l. the Sheriff may deduct in his Accompts, but not the 80 l. or treble Costs; and if he shall not have enough of the Queen's Money in his Hands to satisfy the same, then he shall be repaid by the Lord Treasurer out of the Revenue of the Crown, upon Certificate from the Clerk of the Pipe to that Effect.

And if any Person out of Prison shall discover two House-breakers, so as they shall be convicted, he shall have the like Reward of 40 l. and all other Advantages which such Taker or Prosecutor as aforesaid is entitled unto, and shall likewise have a Pardon, which shall be a Bar to an Appeal.

By the same Statute 'tis enacted, That he who buys stolen Goods, knowing the same to be stole, or who shall receive or conceal any Burglar, Felon or Thief, knowing them to be so, shall be adjudged Accessary to the Fact, and being convicted, shall suffer Death. But if the Principal Felon cannot

not

not be taken, then the Buyer or Receiver of the Goods which he stole shall be prosecuted only for a Misdemeanour, and fined and imprison'd, or suffer any other Corporal Punishment as the Court shall inflict, though the Principal Felon is not convicted; and this shall exempt the Accessary from any farther Punishment, if it shall happen that the Principal should afterwards be convicted.

By another Statute, 'tis made Felony to forge or counterfeit any *Exchequer Bill*, or any Indorsement thereon, or to tender any such Bill in Payment, or demand to have the same exchanged for ready Money by the Governour of the Company of the Bank of *England*, or by any Receiver or Collector, knowing the same to be forged or counterfeited, with an Intent to deceive any Person; and 'tis Felony without Benefit of Clergy. 7 Ann.

No Clerk of Assize or Peace shall take any Thing of a Witness for giving Evidence against a Felon. Which see under Title, Clerk of the Peace.

Felonies committed in the Reign of one King, the Prosecution may be in the Reign of another. Observations thereon.

Felonies committed in one County, and the Offender taken in another, may be imprison'd where taken, and remov'd to be prosecuted where the Fact was done.

But if he carry the Goods with him, 'tis Felony in every County where they are carried.

By the Statute of 23 H. 8. cap. 1. Clergy is taken away from Principals and Accessaries in Robbery: And because Men robbed in one County and fled into another, and so were indicted only for Felony, and had their Clergy; therefore by the Statute of 25 H. 8. cap. 3. Clergy was taken away from those who were found guilty in any County for stealing Goods, if it appear to the Judge that he ought not to have Clergy if he had been tried in the County where the Fact was committed. Anno 31 Eliz. A Man committed a Robbery in *Wilts*, and fled into *Berks*, where the Goods were taken upon him, and there he was indicted only for Felony, and found guilty to the Value of 10*d*. And it appearing to the Court that he had robbed the Person in the Highway, the Question was, Whether he should be hang'd by the Statute of 25 H. 8. or only whipp'd for Petty-Larceny? And resolved by all the Judges, That he shall be only whipp'd, because the Statute extends only to such who shall demand their Clergy, and says it shall be denied, if upon Examination it shall appear there was a Robbery done: But here he is found guilty of Larceny only, and so need not demand his Clergy. Moor 550.

Officers may break open an House to take a Felon, or any one suspected thereof.

Felonies.

And if such Officer hath a Warrant to take a Felon, who is killed in resisting, 'tis no Felony in the Officer; but if the Officer is killed, *contra*.

If a Felon escape from an Officer by Force, and he cannot otherwise retake him, he may be killed, for the Officer will be justified by his Authority.

Cutting Corn, and carrying it away at the same Time, no Felony; but if he lay it aside, and afterwards carries it away, Felony.

A Felon brought before a Justice upon Suspicion, tho' it appear he is not guilty, yet he is not to be discharged without a Trial.

A Warrant to search for a Felon, and to raise Hue-and-Cry, &c.

To all Constables and other Officers in the County of S. &c.

Suffex *J.* **W**Hereas T. P. of, &c. hath this present Day complained unto me, R. B. Esq; one of Her Majesty's Justices of the Peace for the County aforesaid, That upon *Friday* the second Day of *January* last at Night, he was robbed of, &c. and other Things, and that he hath great Cause to suspect J. O. an idle Person, [*Here describe his Person, Clothes, and Age.*] These are therefore to require you, and each of you, to search diligently within your several Precincts for the said J. O. and likewise to make Hue-and-Cry after him from Town to Town, and from one County to another, as well by Horse-men as Foot-men; and if you shall find the said T. P. that then you apprehend him, and carry him before some Justice of Peace where he shall be taken. And hereof fail not. Given, &c.

A Warrant to apprehend a Felon.

To the Constable, &c.

Suffex *J.* **W**Hereas T. P. of, &c. hath this present Day made Oath before me, R. B. Esq; one of Her Majesty's Justices of the Peace of the said County, and thereby charged J. O. of, &c. with the felonious taking, &c. from him the said T. P. on, &c. These are therefore to command you to apprehend the said J. O. and to bring him before me, or some other of Her Majesty's Justices of the Peace for this County, to be examined concerning the Premises with which he is charged. And hereof fail not. Given, &c.

Amher

*Another Warrant to search for suspected Persons, &c.
and to apprehend, &c.*

To the Constables, Tything-men, &c. of H. in the County
of *Sussex*, and to all the other Constables within the said
County.

Sussex ss. **W**Hereas Complaint hath been made unto me by
T. B. of, &c. That certain Sheep, &c. and o-
ther Goods, were lately feloniously taken from him, and that
he hath just Reason to suspect several idle and disorderly Per-
sons within your Parish to have unlawfully taken the same :
These are therefore to command you, that immediately upon
Receipt hereof, you diligently search every suspected House
and Place within your Parish, which you and the said T. B.
shall think convenient to search ; and if you shall find any of
the said Goods in the Possession of any such suspected Per-
son or Persons, or shall have any just Cause to suspect any
Person, that then you bring such Person or Persons before
me, or some other Justice of the Peace for the County afore-
said, to answer the Premises, and to be examined concern-
ing the same. And hereof fail not: Given, &c.

If he confesseth the Felony, then you may take his Examina-
tion subscribed by him thus : *Viz.*

The Examination of a Felon.

Sussex ss. **T**HE Examination of T. P. of, &c. taken before
me R. B. Esq; a Justice of Peace for the said
County, the Second Day of *January*, 1705.

The said T. P. being charged before me by R. R. of, &c.
That the said T. P. did lately feloniously steal out of the
House of the said R. R. in the Parish of, &c. Woollen, &c.
and other Goods of the said R. R. to the Value of, &c. He
the said T. P. did upon his Examination by me, the said Se-
cond Day of *January*, confess that he stole the said Goods,
and sold them to J. O. of, &c. for 10 l. And farther saith
not.

R. B.

T. P.

T

Mit

Mittimus.

To the Keeper of the Common Gaol at H. in and for the County of
Suffex, or to his Deputy there.

*Or having
confessed it
as the Case
is, or being
charged.

Suffex ff. **T**Hese are to charge and command you to receive
into your Gaol the Body of T. P. late of, &c.
taken by W. H. and W. P. Constables of, &c. and brought by
them before me for Suspicion * of Felony, and that you
safely keep him in your said Gaol and Custody until he shall
be from thence discharged by due Course of Law. Given
under, &c.

*A Warrant to cause Witnesses to appear and give
Evidence.*

To the Constable, &c.

Suffex ff. **Y**OU are hereby required forthwith to warn R. D.
of, &c. and T. W. of, &c. to be at my House
in H. &c. upon Friday the Second Day of, &c. by 10 of the
Clock, &c. to testify their Knowledge concerning a certain
Felony suspected to be done by T. P. of, &c. And hereof fail
not. And that you be there likewise with this Precept, to
shew how you have executed the same. Given under my
Hand, &c.

*A Warrant for a Witness to appear and give Evidence
at Sessions.*

To the Constable, &c.

Suffex ff. **W**Hereas I am inform'd, That J. H. of, &c.
is a material Witness to be examin'd on
Her Majesty's Behalf, concerning a felonious Act suspected
lately to be done by T. P. &c. These are therefore to com-
mand you to warn the said J. H. Personally to appear at the
next General Quarter-Sessions of the Peace, to be held for
the said County at L. then and there to give Evidence upon
such Matters as he shall be examined. Given under my
Hand, &c.

Com-

Condition of a Recognizance to appear and give Evidence against a Felon.

THE Condition of this Recognizance is such, That if the said J. H. shall Personally appear at the next General Sessions * of the Peace to be held at L. for the East Part of the said County of *Suffex*, and then and there give such Evidence as you know against, &c. of and concerning his feloniously stealing of two Silver Spoons, the Goods of R. B. and do not depart thence without Leave of that Court, that then, &c.

* Or at the next Assizes, &c.

If there be no direct Charge against the Person, but only Suspicion, then you bind the Person in a Recognizance, with a Condition to appear at the Assizes or Sessions, as followeth:

The Condition for a suspected Person to appear, &c.

THE Condition of this Recognizance is such, That if the above-bounded T. P. shall Personally appear, &c. and do then and there answer all such Matters and Things which shall be objected against him, being suspected to have feloniously taken the Goods of, &c. and do not depart without Leave of the Court, that then this Recognizance to be void, &c.

Indictment for a Felony.

Middl. ff. **JUR'**, &c. quod J. O. nuper de H. in Com' Middlesex, Labourer, 27 die Junii, Anno Regni, &c. primo apud A. præd' in Com' præd', vi & armis, &c. Clausum ejusdam T. P. fregit & intravit & unum equum coloris albi precii 5 l. de bonis & catallis præd. T. P. adtunc & ibidem, scil. apud H. præd' in Com' præd' invent. felonice furt. fuit cepit & effugavit contra pacem dicti Dom. Reg' nunc coronam & dignitatem suam.

For seizing the Goods of a Felon before Conviction. See **Forfeiture**.

Suffex ff. **JUR'**, &c. quod cum quidam J. O. nuper de H. in Com' S. Labourer, capt' & arrestat. fuit pro suspitione felonie per ipsum perpetrat', viz. pro eo quod ipse J. O. felonice cepit & effugavit equum de bonis & catallis ejusdam T. P. & præd' J. O.

By the Statute 1 R. 3. cap. 3. If Goods of a suspected Person be seized before Conviction, he forfeits to the Party

grieved double the Value, to be recovered by Action of Debt, 1 Rep. 171. See 1 Lut. 132. a Declaration on this Statute, Raim. 414.

ad tunc & ibidem ductus fuit coram H. P. Ar' an' Justiciar' Dom' Reg' ad pacem in Com' præd' conservand. assign. & per præceptum ejusdem Justiciar. debito modo commissus fuit Gaolæ Com' præd' & quædam Personæ, viz. J. S. de, &c. & T. R. de, &c. ad tunc & ibidem 5 vaccas duos equos, &c. subducebant de bonis & catallis præd' J. O. sic arrestat. pro Felonia præd' antequam de Felonia præd' convictus fuit contra formam Statuti in hujusmodi casu edit. & provis. & contra pacem, &c.

Godb. 206.

This Statute is but an Affirmance of the Common Law; for there is a Writ to deliver the Goods upon Security given, and 'tis grounded upon this Reason, That the Felon may have something to support himself in Prison; but the Statute doth not extend to a Person *at Large*, for in such Case the Officer may seize them by the Statute of 25 Ed. 3. cap. 14. Raim. 414.

So that at Common Law such Goods are not forfeited till Conviction, and till then the Party ought to have the Benefit of them to maintain himself; 'tis true, they may be put in *salva Custodia*, but cannot be seized for the Use of the Queen till the Party is convicted.

If the Felon doth not fly, but is apprehended with the Goods, the Owner shall have them; if he flies, and fresh Pursuit is made, and he *waves* the Goods, and they are taken up and carried away before the Owner comes, the Property is alter'd by the Seizure, and vested in the Lord; but if the Pursuit was always in View of the Felon, 'tis otherwise. Het. 65.

Felony; Pleas thereunto.

THESE are of three Sorts, viz. { 1. Demurrer.
2. In Abatement or Bar.
3. The general Issue.

1. If the Defendant demurr, he ought to be very certain that the Indictment is faulty; for if it be adjudged good, he shall have Judgment and Execution, because by the Demurrer the Fact is confessed as laid in the Indictment.

* In Abatement, { 1. *Misnomer* in the Surname.
2. *Misnomer* in the Christian Name.

Felony ; Pleas thereunto.

277

If in the Sirname, 'tis a good Plea in Abatement unto an Appeal, but not to an Indictment ; but in the Christian Name, 'tis a good Plea to an Indictment ; and if 'tis found or confessed by the Attorney-General, 'tis naught ; but then the Parry must confess his true Name, that he may instantly be indicted.

In Bar. { 1. *Auterfoitz* Acquit.
2. *Auterfoitz* Convict.

1. This must always be intended of a lawful Acquittal ; for if the Indictment or Appeal is insufficient and faulty, and the Defendant is acquitted thereon, he may be indicted again for the same Felony, unless Judgment is given upon such Indictment, for that must stand till reversed by Error.

Auterfoitz
Acquit.

2. This must be always of the same Felony, and therefore 'tis no good Plea to an Indictment or Appeal for another Felony.

3. An Acquittal upon an Indictment of Death, is no Plea to an Appeal brought for the same Death ; but an Acquittal upon an Indictment or an Appeal, in Cases of Felony, is a good Plea to any other Indictment for the same Felony, though 'tis not so in the Case of Death.

But then the Appeal must not be Erroneous in Substance, nor be brought by a wrong Person.

Auterfoitz
Convict.

{ Of Man-slaughter, either upon an Indictment or an Appeal, is a good Plea to any other Indictment for the same Death.

Feme-Covert.

THE Peace may be granted against her, or against an Instant, tho' under 14 Years of Age ; but then she must not be bound, tho' with her Husband, for the Recognizance will be void as to her, but she must find Sureries ; which, if she cannot do, she must be committed.

If she commit a Riot or Trespas without her Husband, she may be indicted and fined, but the Fine shall not be levied

on her Husband, but on her after his Death, and she shall be committed till 'tis paid, 9 Rep. 72. Dr. Hussy's Case; 11 Rep. Dr. Foster's Case.

If she steal Goods by the Compulsion of her Husband, 'tis not Felony in her, because of the Necessity of Obedience; but if it was at his Perswasion without any Constraint, she is then guilty of Felony, and her Husband is Accessary.

But this Privilege doth not prevail in Cases of Treason and Murder, because of the Greatness of these Offences.

It hath been held, That if both steal together, this shall be taken to be the Act of the Husband alone, and that she cannot be so much as Accessary to it, because of the Necessity of Obedience as aforesaid; but I think Obedience should only extenuate the Crime, for such it is, and she ought not to consent to it, if she doth, she may be indicted.

She cannot steal her Husband's Goods; but if she is taken away with them against his Consent, 'tis Felony in him that takes her; so 'tis if she deliver her Husband's Goods to an Adulterer, this is Felony in him.

In an Indictment for her selling Ale without Licence, the Husband must be join'd, because he is to pay the Fine.

She may be committed for a Force or Riot, as aforesaid, but an Infant cannot; yet if she be asked to find Sureties of the Peace, and cannot, she may be committed.

Wheasant. See Partridge.

Forrest. See Dogs.

Fire.

TO prevent Losses and Mischiefs which may happen by Fire within the Cities of *London* and *Westminster*, and within the Compass of the Weekly Bills of Mortality, a * Law was made, That the Church-wardens of every Parish in the said Places, shall, at the Charge of their respective Parishes, fix upon the Pipes belonging to the Water-works, so many Wooden Stop-Blocks, to lie even with the Pavement of the Street, with a Two-Inch Plug; the said Stop-Blocks to be repaired by the Parish, and the Plugs by the Owners of the Pipes; or so many Fire-Cocks to go into each main Pipe, and to be placed in any Street where the said Church-wardens shall direct; to make a Mark on the Front of any House over-against the Places where such Stop-Blocks are, and to keep an Instrument in the said House to open the Plug when any Fire happens.

And

* 6 Annæ.

And that each Parish shall keep a large * Engine, and an Hand-Engine, and a Leather Pipe and Socket of the same Size as the Plug or Fire-Cock, that the Socket may be put into the Pipe to convey the Water clean to the Engine; or in Default thereof, being convicted before two Justices of Peace, shall forfeit 10 *l.* one Moiety to the Informer, and the other to the Overseer of the Poor where such Default shall be made, for the Use of the said Poor.

This Forfeiture is to be levied by a Warrant of two Justices, &c. by Distress and Sale of the Goods of the Church-wardens.

And 'tis further provided, That the Turn-Cock belonging to the Water-work, whose Water shall first come into the Main-Pipe where the Plug shall be opened at any Fire, shall be paid 10 *s.* and the first Person who brings in a † Parish-Engine, if in good Order, with a Socket, Hose, and Leather Pipe, shall be paid 30 *s.* the Person who brings in the second Parish-Engine shall be paid 20 *s.* and the third 10 *s.* by the * Church-wardens of the Parish where such Fire shall happen.

All these Sums, in Default of Payment, shall be recovered by Warrant of two Justices, &c. by Distress and Sal. of the Goods of the Church-wardens.

And because Fires often happen by the Negligence and Carelessness of Servants, both in Houses and Out-houses; therefore if such Servant shall be lawfully convicted thereof before two Justices of the Peace by the Oath of one Witness, he shall forfeit 100 *l.* to the Church-wardens of such Parish, to be distributed amongst the Sufferers as to the Church-wardens shall seem just; and in Default or Refusal to pay the same, immediately upon the Conviction, being lawfully demanded by the Church-wardens, shall be committed by two Justices to the House of Correction for 18 Months, there to be kept to hard Labour.

All Houses built since May 1708, shall have Party-Walls between House and House, built wholly with Brick or Stone. In the Cellar, two Bricks thick; from the Foundation upwards, 13 Inches; above the Roof, 18 Inches; and no Mundilions of Timber under the Eaves: Front and Rear-Walls to be carried two Foot and a half high above the Garret-Floor with Brick or Stone; and if otherwise, then the Owner of the House, and Head-Builder, shall each of them forfeit 50 *l.* one Moiety to the Informer, and the other to the Poor of the Parish where the House is built, to be paid to the Church-wardens for that Purpose.

This is to be levied by a Warrant from two Justices, by Distress and Sale of the Offender's Goods.

The Conviction is to be upon Oath, or upon View of one or more Justices; and for want of Distress, the Party shall by the like Warrant be committed till Payment.

* Per 7 Anne, The Church-wardens may assess Money for the Maintenance of the Engine, Stop-Blocks, &c. as they do for the Maintenance of the Poor, &c.

† Per 7 Anne, or any other great Engine.

* Per 7 Anne, but not without the Approbation of the Alderman of the Ward, or his Deputy, or 2 Common-Council-Men of the Ward where the Parish is, in which the Fire happened.

And for the Space of 3 Years next ensuing, and from thence to the end of the next Sessions of Parliament, no Action shall be brought against any Person in whose House any Fire began.

A Warrant against Church-wardens for not fixing Stop-Blocks.

To the Constable, &c.

Land. ff. **W**Hereas T. S. and J. B. Church-wardens of the Parish of St. Martin's Ludgate, in the City of London, have been duly convicted before us J. M. and N. P. two of Her Majesty's Justices of the Peace in and for the said City, that the said Church-wardens have since the first Day of May, which was in the Year of our Lord 1708, made Default in placing, fixing, and continuing Stop-Blocks of Wood, with a Two-Inch Plug on the Main-Pipe, belonging to the Water-work in the said Parish, contrary to the Law in that Case made and provided, by Reason whereof they have forfeited 10 l. These are therefore to require you, to levy the said Sum of 10 l. by Distress and Sale of the Goods of the said Church-wardens, rendering to them the Overplus, if any such shall happen to be; and that you pay one Moiety thereof to R. W. of, &c. who first inform'd us of the said Offence, and the other Moiety to the Overseers of the Poor of the said Parish of St. Martin's, where the said Default was made as aforesaid, for the Use of the Poor of the said Parish. And hereof fail not. Given, &c.

The like Warrant, *mutatis mutandis*, against Church-wardens, for making Default in having and keeping in good Order and Repair, one large Engine, and an Hand-Engine, Leather Pipe and Socket.

A Warrant for an Engine-Keeper to recover 30 s.

To the Constable, &c.

Land. ff. **W**Hereas due Proof hath been made on the Day of the Date hereof, before us J. O. and H. H. two of Her Majesty's Justices of the Peace in and for the said City of London, That C. R. Engine-Keeper, did first bring in a Parish-Engine, to help extinguish a Fire which lately happen'd in the said Parish; which Engine was then in good order, and compleat, with a Socket, Hose, and Leather Pipe; by Reason whereof, the Church-wardens of the said Parish ought to have paid unto the said C. R. the Sum of 30 s. pursuant to the Statute in that Case made and provided, but have hitherto made Default in Payment thereof: These are therefore to require you

You to levy the said Sum of 30 s. by Distress and Sale of the Goods of the said Church-wardens, and that you pay the Sum to the said G. R. And hereof fail not, &c.

A *Mittimus* of a Servant for negligently keeping the Fire.

To the Constable, &c. and to the Keeper of the House of Correction.

Suffex ss. **W**Hereas T. L. Servant of W. N. of, &c. was on the Day of the Date hereof lawfully convicted before us R. B. and G. G. Esquires, Two of Her Majesty's Justices of the Peace for the said County, by the Oath of W. T. of, &c. That he the said T. L. did on the Day of, &c. last past, through Negligence, fire, or cause to be fired, the Dwelling-House of the said W. N. in the Parish of H. aforesaid, by Reason whereof he hath forfeited the Sum of 100 l. pursuant to the Statute in that Case made and provided: And whereas the Church-wardens of the Parish of H. where such Fire did happen, did immediately after the said Conviction demand of the said T. L. the aforesaid Sum of 100 l. the same being forfeited and to be paid to them, to be * distributed as by Law is directed; but the said T. L. hath refused to pay the same: These are therefore to require you to convey the said T. L. to the House of Correction at L. and to deliver him to the Keeper thereof, together with this Warrant, who is hereby commanded to receive the said T. L. into his Custody, and to keep him in the said House of Correction to hard Labour for the space of Eighteen Months next ensuing; and for your so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

* *Viz.* Amongst the Sufferers, and in such Portions as the Church-wardens shall direct.

A Warrant against an Owner of an House, and Head-Builder, for building contrary to the Act.

To the Constable, &c.

London ss. **W**Hereas G. C. Owner of a new House in Fleet-street, was, on the Day of the Date hereof, convicted before us, &c. by the Oath of W. D. of, &c. for that he the said G. C. did after the First Day of May, which was in the Year 1708, together with T. D. of, &c. Mason, who did undertake to build the said House, did accordingly build the same without Party-Walls between House and House, made either of Brick or Stone, &c. and did make, or suffered to be made, Mundilions or Cornishes of Timber or Wood under the Eaves of the said House, and did not build, or cause to be built, the Front and Rear-Walls of the said House either with Brick or Stone, nor carry the same above Two Foot

Foot and an half high above the Garret-Floor of the said House, nor cope it with Stone or Brick, contrary to the Law in that Case made and provided, by Reason whereof each of the said Persons have forfeited the Sum of Fifty Pounds: These are therefore to require you forthwith to levy the respective Sums of Fifty Pounds by Distress and Sale of the respective Goods of each of the said Persons; and that you pay one Moiety thereof to *W. D. of, &c.* who first informed us of the said Offence; and the other Moiety to the Church-wardens of the Parish of *St. Dunstan's* in the West, where the said Houses were erected, for the Use of the Poor thereof: And hereof fail not. Given under our Hands and Seals, &c.

A Mittimus for want of a Distress.

To the Keeper of the Gaol of Newgate, &c.

London ss. **W**Hereas *T. D. Mason* and Head-Builder of a House newly erected in the Parish of *St. Dunstan's* in the West in *London*, was lawfully convicted before us *R. B. and G. G. &c.* for that he, on the Sixth Day of *August* last past, did erect and build the said House in the Parish aforesaid, and did make, or suffered to be made, Mundilions or Cornishes of Timber or Wood under the Eaves thereof, contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited Fifty Pounds: And whereas the said Sum cannot be levied by Distress and Sale of the Goods of the aforesaid *T. D.* who, for want of such Distress, is to be imprisoned: These are therefore to require you to convey the said *T. D.* to the Common Gaol of *Newgate*, and to deliver him to the Keeper thereof, who is hereby required safely to keep him in his Custody until Payment shall be made of the said Fifty Pounds as the Law directs, &c.

The Form of a Testimonial, &c. of a Loss by Fire.

Suffex ss. **T**O all to whom these Presents shall come, *T. P. R. B. and G. G.* Three Justices of the Peace for the County aforesaid, send Greeting: We have, at the Petition of our Neighbours, *T. P. R. D. R. R. and J. O.* who are the Bearers thereof, declared, and do hereby declare, That on the Second Day of *January*, &c. between the Hours of, &c. a sudden and lamentable Fire happened in the House of, &c. which in a few Hours burnt down the several Dwelling-Houses of the Persons above-named in the Parish of, &c. and other Out-Houses thereunto belonging, and great Part of their Household-Goods, and other Goods, and Corn and Hay,

Hay, to their great Loss and Impoverishment : And so far as much as the said Petitioners in the Behalf of themselves and their Neighbours are now compelled, by reason of the said Losses, to implore the Relief of Charitable People ; and we knowing their Case, as above represented, to be very miserable, have therefore, as much as in us lieth, given Leave unto them, and every one of them, to go from Place to Place within the said County, to ask, receive, and take the Charity and Benevolence of all well-disposed People, as well to relieve them in their present Necessities, as towards the Recovery of their said Losses : And we desire all Ecclesiastical Persons, to whom these miserable People shall come and address themselves in this Behalf, to exhort the Parishioners in their respective Parishes, to extend their Charity to these distressed Persons ; and that those whom it concerneth, would be aiding and assisting to them in the Collection thereof. In Witness, &c.

Fish,

TAKEN unlawfully, without the Consent of the Owner of the Water, the Offender must pay Damgages, not exceeding treble ; and to the Poor, not exceeding 10 s. This to be left to the Discretion of the Justice ; and if not able, or no Distress, must be committed, not exceeding one Month, unless he give Security to the Party injured, not exceeding 10 l. never to offend in the like Nature. 22 & 23 Car. 2.

Conviction is to be by Confession, or Oath of one Witness before a Justice. *ibid.*

Taken unlawfully in *Severn*, the Offender forfeits 5 l. Fish and Instruments ; and if he destroys the Spawn, forfeits 40 s. and Instruments between Poor and Prosecutor.

Conviction is to be by Information or Indictment at the Sessions. 30 Car. 2. cap. 9.

Justices in *Gloucester*, *Salop*, and *Worcester Shires*, are Conservators of that River ; and one or more of them may grant Warrants to search suspected Houses, &c. *ibid.*

Must not be taken under 12 Inches long ; Forfeiture is 20 s. the Fish taken, and the Engine with which 'tis taken. 1 Eliz. cap. 7.

By this Statute, all Persons who have a Jurisdiction of Conservancy upon Streams of Water, have Power to hear and determine Offences upon the Oaths of Twelve Men ; and the Justices of Peace being generally Conservators of Rivers, may therefore enquire concerning it.

But

But by the exprefs Words of the Statute, the Justices in Sessions have Power, &c. upon Default of Presentment in Leets within a Year ; the Steward of Leets being enjoined to give the Statute in Charge, or forfeit 40 s. between Queen and Profecutor.

And if the Jury forbear to present the Offences in this Statute, then the Steward may impanel another to enquire of their Default ; which being found, the first Jury shall each forfeit 20 s. apiece.

10 & 11
Will.

By this Statute, *Billinggate* is made a free and open Market every Day in the Week for all Fish ; and those who buy Fish there, may sell them again by Retail.

And likewise the Statute of 5 *Eliz.* is enforced, by which no Man was to set a Price, restrain or demand any Tax or Toll for Sea-Fish caught by the Queen's Subjects, and brought into any Place in the Kingdom, under the Penalty of the Forfeiture of the Fish so tolled : But by this Act, the Punishment for taking or demanding any Toll, or other Imposition for *Sea-Fish* of *English* catching, is 10 l. one Moiety to the Queen, the other to him who will sue for the same.

And because the Fishmongers had got an ill Practice, by imploying some of the Trade to buy up all the Fish brought to *Billinggate*, and then to divide the same amongst three Brethren by Lots, and by this Means sold the Fish at what Rate they would ; therefore this Practice was prohibited, and the Imployer imployed to buy any Quantity of Fish to be sold by Lots, and the Fishmonger who should buy in *Billinggate* any Quantity but what shall be for his own Sale and Use, forfeit for each Offence 20 l. one Moiety to the Poor of the Parish where the Offence shall be committed, and the other to the Profecutor.

[Shall not be sold at Sea before Fishermen come to Land. 31 *Ed.* 3. *cap.* 2.

[Of *English* catching, must be packed in lawful Vessels, and equally packed at both Ends by a sworn Packer, who must mark the Vessels, &c. 15 *Car.* *cap.* 16.

Herrings.

[Price of a Last of Herrings in Great *Yarmouth*, must be 40 s. a Last, and must consist of 10000 Herrings.

[Must not be brought into *Yarmouth* Haven between *Michaelmas* and *Martinmas* ; Punishment is Imprisonment during the Queen's Pleasure, and Forfeiture of Herrings.

[Two Lasts of Shorten Herrings equal to one of full Herrings. 31 *Ed.* 3. *cap.* 2.

Lobsters,

Lobsters,

Must not be sold under Eight Inches from the Peak of the Nose to the End of the middle Fin of the Tail ; Forfeiture is 1 s. for each Lobster, a Moiety to the Poor of the Parish where the Offence is committed, the other Moiety to the Prosecutor : Conviction is to be before the Chief Magistrate of any Town-Corporate, or next Justice where the Offence is committed. 10 & 11 Will.

Used to destroy Fish, may be burnt by one Justice.

Second Offence, Commitment for a Quarter of a Year.

Third Offence, Commitment for a whole Year ; and as the Offence, so the Punishment is to encrease. 17 R. 2. cap. 9.

Nets, (See Dogs.)

Drag-Nets must not be used within five Miles of the Mouth of any Haven, unless 3 Inches in Mesh, except in *Norfolk*, for taking of Herrings, Pilchards, &c. 3 Jac. 12.

Canvas-Nets, or other Devices, shall not be used to destroy Spawn ; the Offender forfeits his Nets, and 10 s. to the Poor, to be levied by Warrant from one Justice, &c. 3 Jac. cap. 12. 1 Eliz. cap. 17.

Fishing on the Shore of *Cornwall* or *Devon* with a Drift-Net, Trammel, or Stream-Net, or other Nets of any Sort, from the First of June to the last of October, forfeits the Nets, or Value of them, and must be committed for a Month. 13 & 14 Car. 2. cap. 28.

If any besides Owners, Partners or Adventurers in the Craft of Fishing, pack Pilchards in Casks to be sold or transported, except bought of those Owners, or with their Leave, forfeits the Value to the Queen and Informer. 12 & 14 Car. 2. cap. 28.

Pilchards,

Purloiners of Pilchards must pay the treble Value, or be sent to the House of Correction ; and suspicious Persons flocking about Boats, Nets, or Cellars where Pilchards are, being warned to be gone, and refusing, must, upon Complaint to one Justice, pay 5 s. to the Poor, or be put in the Stocks Five Hours. 13 & 14 Car. 2. cap. 24.

Pike,

Must not be taken under Ten Inches ; Forfeiture as *antea* in Barbels.

Salmon,

Must not be taken, from the 8th of September to the 11th of November; nor young Ones, from the middle of April to the 24th of June.
First Offence, Nets burned.

Salmon, Second Offence, Commitment for a Quarter of a Year.

Third Offence, Commitment for a Year; and as the Offence, so the Punishment is to encrease. 13 Ed. 1. cap. 7.

Must not be under 16 Inches long when caught, nor taken out of Season: Forfeiture *ut prius* in Barbels, *quod vide*.

Salmon, Must not be taken out of Season, or shorter than Eight Inches: Forfeiture as in Barbels, *quod vide antea*.

By a Statute made 4 & 5 Anne, this Statute of 13 Ed. 1. shall extend and be in Force, as well to the Rivers, Creeks and Waters in Hampshire and the South Parts of Wiltshire, as to the Waters of Humber, Ouse, Trent, and other Waters in the old Act mentioned, and under the same Penalties as therein mentioned.

Two Justices of Peace residing within Five Miles of the respective Rivers in Hampshire and Wiltshire, may under their Hands and Seals appoint Overseers of this Statute, who being sworn before the said Justices, may take Offenders, &c. and destroy their Nets and Engines where they shall be found, and which are kept or used contrary to any Act relating to Fishing.

The Overseers may bring the Offenders before a Justice of Peace, who for the first Offence shall forfeit not under 20 s. nor above 5 l. for the second Offence not under 40 s. nor above 10 l. And as the Offence shall encrease, so the Penalty is to be doubled by the Justice before whom the Conviction shall be made.

The Conviction is to be upon Oath of one or more Witnesses, or Confession of the Offender; and a Moiety of the Forfeiture is to be to the Informer, and the other Moiety to the Poor of the Parish where the Offence shall be committed; and if the Party is not able, or shall not pay it on Demand, then the Justice, before whom the Conviction shall be made, may send him to the House of Correction, there to be kept for Three Months.

No Person must take Salmon at any Time after the 30th of June till after the 11th of November, or offer any to Sale, under the like Forfeitures and Imprisonment.

And if it shall happen that any Salmon shall go into the Ditches, Curts or Water-Carriages of Meadow-Grounds with

within the Time limited and restrained by the Act, that then the Owners or Tenants of such Grounds shall permit them to pass into the main Rivers, and not by any wilful Means destroy them, under the like Penalties.

Owners and Tenants of Mills in the said Counties, upon any of the Waters or Rivers there, shall keep open a small Hatch of a Foot square in the direct Stream, where there is no Wheel sufficient for the Salmon to pass and repass, from the 11th Day of November to the 31st Day of May, and shall not use any Nets or other Devices in that Hatch, during the said Term, to kill or take the Salmon, under the like Penalties.

If they lay Pots to catch Eels after the First of January to the Tenth of March, they must set Racks before them to keep out the old Salmon; and after the said 10th of March to the 30th of May, they shall lay no Pot but what shall be wide enough to let the Fry of Salmon pass through to the Sea; and shall not take or keep, or offer to Sale, any of the young Fry during that Season, under the like Penalties.

No Sea-Trouts shall be taken in any of the said Rivers or Creeks, or Arms of the Sea in the said Counties, after the 30th of June to the 11th of November, under the like Penalties.

Any Person exposing Salmon to Sale in those Counties, from the 30th of June to the 11th of November, shall be subject to the like Penalties.

All which are to be levied by a Warrant, under the Hand and Seal of the Justice before whom the Conviction was made, by Distress and Sale of the Offenders Goods; and for want of Distress, then to the House of Correction.

Wears, { Erected along the Sea-shore, Haven or Creek,
or within Five Miles thereof, forfeits 10 l.
to the Queen and Prosecutor.

He who unlawfully breaks down a Fish-Pond-Head, or fishes without Leave of the Owner, must be committed for Three Months, and be bound with Sureties to his Good Behaviour for Seven Years, and the Party grieved may in the Sessions recover treble Damages; but upon Acknowledgment of his Offence in Sessions, and satisfying the Party grieved, the Justices may release the Good Behaviour. 37 H.8. c.6.
§ Eliz. 21.

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An Indictment for Fishing without the Consent of the Owner.

Suffex ff. **JUR'**, &c. *quod J. O. de, &c. in Com' predict. Yeo-*
man, 3 die Januarii, Anno, &c. vi & armis clausum
ejusdam A. S. apud P. in Com. pred. fregit & in separali Piscaria
sua ibid. illicite piscatus est, & Pisces inde, viz. duos Salmones &
centum Trutas, &c. ad Valentiam, &c. adtunc & ibidem cepit &
asportavit & herbam suam ad Valentiam, &c. ibidem naper crescen.
conculcavit & consumpsit, & alia enormia ei intulit contra Pacem
Dom. Regine nunc, &c.

An Indictment for Fishing in a Pond, &c.

Suffex ff. **JUR'**, &c. *quod J. O. de H. in Com. pred. Labou-*
rer, &c. 1 die Maii, Anno, &c. diversis diebus & vi-
cibus tam antequam post pred. primum diem Maii apud H. pred.
in Com. pred. vi & armis in uno stagno ibidem existen. libero tene-
ment. A. S. Gen. cum rebus & aliis engin. illicite piscatus fuit, &
diversas Pisces inde, viz. Centum Trutas, &c. tunc & ibidem cepit
& asportavit contra Pacem, &c.

Flax, See Wool.

Force Lawful.

IN what Cases Doors may be broke open: *Viz.*

1. To apprehend,
 - For Treason, Felony, or Suspicion thereof.
 - Any Person, who hath wounded another very dangerously, and flieth for the same to a House.
 - A Popish Recusant Excommunicate.
2. An Affray in the House, and the Doors shut.
3. Upon a Warrant for the Peace or Good Behaviour, *quare.*
4. Upon a *Capias Ut legatum* in a Personal Action, and upon a *Capias pro fine* directed to the Sheriff.

Hob. 263.

A Man was outlawed for want of an Appearance; the Sheriff came to his House with a *Latitat*, and with a *Capias Ut legatum*, without the Privy of the Plaintiff, and the outward Door being open, he entred; then he and his Company shut the Door and drew their Swords, and went up to the Chamber where the Man was in Bed, and knocked gently at the

the Door, which was lock'd, but did not tell who they were, or for what they came; but the Door not being immediately opened, they broke it open, and arrested the Person upon the *Latitat*, and took Bond for his Appearance, and 40 s. for suing out a *Supersedeas* to the Outlawry; but the Sheriff was fined 200 l. for this Outrage and Terror, and for not telling who he was, that the Door might be opened without Violence.

So where a Sheriff had *mesne Process* against one, and came to his House and knock'd gently at the Door, the Wife open'd it a little to see who it was, and he forced in with his Sword drawn, and broke upon the Door where the Defendant lay! This was unlawful, because the first Entry was so, for the opening the Door was by Craft and Violence, which was intended. Hob. 62;

But if upon such *Process* a Bailiff catch the Defendant by the Hand, as he held it out of the Window; this is such a Taking, that he may justify the breaking open the House. 1 Vent. 366

5. Upon a Forcible Entry or Detainer, found by Inquisition before the Justices, or upon their own View,
6. Upon a Judgment in Ejectment, but then the Officer must signify the Cause of his Coming. *5 Rep. 91.*
7. In all Cases where the Queen is Party, or hath any Interest, &c.

But you cannot break open a Door upon an Execution at the Suit of a common Person, for 'tis illegal; and if the Officer is kill'd in doing it, 'tis only Manslaughter. Jones 429;

Flight. See *Forfeiture.*

Forcible Entry,

AT Common Law, where a Man had a Title to Lands, he might not only enter, but detain by Force; and tho' it was done in the Presence of an Officer, yet he had no Power to interpose, unless some great Mischief (as Murder, &c.) was committed.

And this was the Occasion of making the Statute of 5 R. 2. cap. 7. which prohibits the Force, tho' the Person had a Title, and appoints that the Justices shall inquire into it, and not otherwise, that is, in their Sessions.

This being for that very Reason found to be inconvenient, a quicker Remedy was provided to remove the Force, by the Statute of 15 R. 2. which gives one or more Justices Authority

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Forcible Entry.

ity to take sufficient Power with them, and to view the Place where the *Entry* and Detainer is, by Force, and to commit the Offenders, there to remain till they have made Fine and Ransom to the Queen.

By this Statute likewise, the Sheriff and all others are to be Assistant to the Justices, upon Pain of Fine and Imprisonment.

But still there remained some Inconveniencies which this Law did not Remedy :

1. As if the Entry was Peaceable, and the Detainer by Force.
2. If the Persons were gone before the Justices came, they could proceed no farther.
3. They had not Power to give Restitution to the Party grieved.

All these Matters were remedied by the Statute of 8 H. 6. which gives Power to one or more Justices, by Warrant, to command the Sheriff to summon a Jury to enquire of the Force, and to seize the Tenements as well in the Absence as Presence of the Offender.

It likewise appoints the Statute of 15 R. 2. to be put in Execution, although the Detainer by Force was after a peaceable Entry ; and all at the Costs of the Party grieved.

It likewise inflicts the Penalty of 20 l. upon the Sheriff neglecting his Duty, to be recovered by Indictment at Sessions, and divided between Queen and Prosecutor.

2 Cro. 199.

But the Justices cannot make Enquiry into a Force, after a peaceable Possession for three Years.

And by the Statute of 31 Eliz. no Restitution can be made upon Indictment of Force, &c. where the Party had such a quiet Possession for three Years as aforesaid.

Afterwards some Doubts arising, whether the Justices had any Power but only in Cases of Freehold ; this was the Occasion of making the Statute of 21 Jac. cap. 15. by which they have Power to give Restitution to Tenants for Years, Tenants by *Elegit*, Statute, &c. Copyholders, &c. as well as to Freeholders, put out or detained by Force : So that now a compleat Remedy is given,

1. Against those who enter with Force, and continue the Possession peaceably.
2. Against those who enter peaceably, and hold out with Force.
3. Against those who both enter and hold out with Force.

Forcible Entry.

291

It must be *manu forti*, and 'tis Force if he enter to commit a Trespass, tho' the Party doth not quit the Possession ; but if the Entry is peaceable, then 'tis Disseisin, not Force ; being provided with Weapons threatening Life or Loss of Limbs, breaking open Doors, or entering, the Doors being open, with unusual Armour or Weapons, ejecting or distraining for Rent with Force.

The Reason why it must be set forth to be done *manu forti*, is to distinguish it from all other Trespasses ; those are peculiar Words adapted to an Indictment for this Offence : And therefore *vi & armis*, or *fortitudine & potentia magna*, or such like Words, tho' they may signify the same Thing, yet will not make the Indictment good.

By denying Entrance to the Justice, tho' by one Person.

By keeping Cattle in another Man's Ground, claiming any Right of Common, &c.

Menacing to keep the Possession, tho' no Force used.

Resisting, threatening, or rescuing in Cases of Distress for Rent or Common, one Justice may remove the Force, record it upon View, but cannot make Restitution.

One alone, without the Help of another.

Indictment for a *Forcible Entry* and *Detainer*, the Jury find the *Entry with Force*, but the *Detainer Peaceable* ; and this was held insufficient to grant Restitution upon it.

So where the Jury found *quoad* the *Entry ignoramus*, and *quoad* the *Detainer Billa vera*, and upon Restitution awarded by the Justices of Peace, B. R. set it aside, and granted a Re-restitution, because the Indictment being entire for the Entry as well as the Detainer, and the Jury having found but one, 'tis therefore void. *Telv.* 99, 100. 2 *Cro.* 151.

Indictment *quare in medietatem intravit* is void, for the Entry must be into the whole.

An Infant above 14, & *Feme-Covert*, for which they may be committed and fined, tho' 'tis Prudence not to commit the Infant, and the Husband shall not be charged with the Fine of his Wife.

If several come with an Intention to enter, and one commit the Force, all are guilty, though the other are peaceable.

If more than three, 'tis a Riot, and then the two next Justices may enquire within a Month by a Jury.

33 Bar 18
a *Forcible Entry*.

Stiles 135.
Cro. Eliz.
451.
2 Bulst. 258.
Noy 155.

Forcible Detainer.

what Persons may be guilty of both.
Sid. 97.
414, contra.

Palm. 419.

The Power of the Justices upon the Statute of 15 R. 2. c. 2. one Justice.

Upon the Statute of 8 H. 6. two Justices.

He may go to the Place and take the Assistance of the Sheriff if he thinks fit, may break open the Door if resisted, and may arrest and commit the Offenders; he may command any one to assist him, and commit and fine those who refuse.

If he sees the Force, he may record it, and commit the Offenders, for his View is a Conviction, and this Record being certified in B. R. the Court will grant Restitution, and assess a Fine. 8 Rep. 120.

If the Offenders are gone before the Justices come, then they may direct their Precept to the Sheriff, to impanel 24 Men of 40 s. per Annum Freehold each of them; and 12 must be sworn to enquire of the Force, and when found, the Justices may either themselves put the Party in Possession, or make a Precept to the Sheriff for that Purpose: And this must be done, tho' they view the Force, if they intend to put the Party into Possession.

The same Justices, before whom the Force was found, having made a Precept to the Sheriff to restore the Party, may grant a *Superfedas* to stay Restitution if he see Cause.

But if the Party doth not think fit to apply himself to the Justices, then he may have an Action of Trespass against the Defendant (who had no Title of Entry) and entering with Force, and may recover treble Costs and Damages; but if his Entry was upon good Title, tho' with Force, then you must proceed by Indictment.

Lawful Detainer. { Continuing in Possession Three Years peaceably, he may justify the Detainer by Force.

But must not resist the Justice when he comes to View.

This Possession may be pleaded to an Indictment for a Force, which will not only excuse the Fine and Commitment, but prevent the Restitution.

The Entry must be *vi & armis*, or peaceably, and detaining with Force, according to the Words of the Statute of 8 H. 6. Roll. Abr. 2. pag. 80.

The Quality of the Thing upon which the Entry is made, must also be set forth, as into a Messuage, Meadow, Wood, &c. for entering in *Tenementa* generally is not good, because of the Incertainty, for it may extend to a House or Cottage. 2 Roll. Rep. 46. so an Entry into two Closes, *Prati sive Pastura* is not good. Roll. Abr. 2. pag. 81.

It must be either *manu Forti*, or *multitudine Gentium*, and it must conclude *adhuc extratenet*, for without those Words there cannot be any Restitution; and likewise *contra formam Statut.* Roll. Ab. 2. pag. 82.

It must be certain, therefore an Entry into *Messuagium*, or *Cottagium sive Tenementum*, is void. *Roll. Abr.* 2. p. 80. 1 Mod. 73.

But in *Clausum* is good, for that is certain enough.

And as to the *Certiorari*, that must be delivered in open Sessions, which is a *Superfedeas*.

But the Traverse is no *Superfedeas*, because the Force being found upon the Indictment, the Justice may restore the Party grieved, or otherwise may certify the Indictment to B. R. but he that tendereth the Traverse, must bear all the Charges of the Prosecution, both before the Justice and in B. R.

If the Justice will try the Traverse presently, it must not be by the Jury who found the Force, but by a new Jury, to be returned by the Sheriff the next Day, and this Traverse must be in Writing.

The Justice may direct his Precept to the Sheriff to impanel a Jury *ut prius*, and upon Default of their Appearance, may award an *alias & pluries*, and return 40 s. Issues upon the second Precept on each of the Jury, and 5 l. Issues on the third Precept, and at every Time afterwards double. Jurg.

The Expulsion must be out of House or Lands, and so set forth in the Indictment.

In the Indictment, the Estate must be set forth, for 'tis not enough to alledge generally that *Possessionatus fuit*, because a Tenant at Will may be so possess'd, and he is not within either of the Statutes. *Sid.* 102. Indictment. 1 Mod. 73.

But since I have mentioned the Statutes, I must likewise take Notice, that 'tis not the best Way to recite them in the Indictment; for if misrecited in any Particular, it will be quashed. *Cro. Eliz.* 93, 96, 106, 307, 697. 1 *Bulst.* 218.

The Indictment was for a Forcible Entry into a *Copyhold*, viz. That the Defendant *ejecit & disseisvit*, for which Reason it was quash'd, because *Disseisin* is applicable only to a *Freehold*, and therefore in all Cases, except for a *Freehold*, it ought to be *ejecit expulit & amovit*. *Raym.* 67. 4 *Inst.* 176.

And even in the Case of a *Freehold expulit seu disseisvit* is void, because 'tis in the Disjunctive; for there must be an actual Expulsion and Disseisin. 1 *Roll. Rep.* 406.

And so is *disseisvit*, without shewing what Estate he had. 1 *Vent.* 306.

If it is for *disseising* the Landlord, and *expelling* the Tenant, tho' the Entry was made by Command of the Landlord, and he opposed Restitution; yet it was granted by B. R. for they may reform the several Degrees of Wrongs; but if it had been only for expelling the Tenant, he could not have Restitution. *Relv.* § 1.

It must be *adhuc existens liberum Tenementum*, as well as *ad-
tunc*. 2 Cro. 214, 639. *Levinz* 1. p. 90.

Pleas to
an Indict-
ment.

1. Quiet Possession for Three Years before the Inquisition
found. 31 *Eliz. cap. 11. Raym.* 84.

This must be understood of a Term of Years; but if it
had been a Freehold, then he must set forth that he was sei-
zed, &c. and was in Possession for three Years, &c. and 'tis not
material to shew how seized, because 'tis not the Title, but
the Possession which is requisite to be alledged. *Sid.* 156.

2. The Defendant may tender a Traverse.

3. He may demur to the Insufficiency of the Indictment.

4. And plead to Insufficiency of Jurors, not having 401.
Freehold.

Of what
it is.

5. May bring a *Certiorari*, which is a *Superfedeas*, for Tythes,
Rents, &c. 1 Cro. 146.

Sid. 101.

To remove a Force out of a Parish Church or Parsonage-
House, tho' there is another Remedy by *vi Laica removenda*.

Restitu-
tion,

After Enquiry, the Justice may break open the House and
restore the Party himself, for none but he who is actually
put out of Possession can be restored.

Where they find a Force, and make a Record of it on
their own View, they may commit the Offenders, but can-
not grant Restitution. 1 *Vent.* 308. *Sid.* 156.

It must be of House or Land, it cannot be of Rent, Com-
mon Advowson, &c. *Quare*.

Sid. 187.

If the Defendant traverse the Indictment, the best Way
for the Justice is to certify it into B. R.

Dyer 122.

But after a Traverse, the Court cannot grant Restitution.
1 *Vent.* 265. But in *Dyer* there is a contrary Opinion.

If the Justices certify, That Complaint was made to them
of a Forcible Entry into an House, and thereupon they went
thither and found it true, and removed the Force, and fined
the Defendant 20*l.* This Certificate is not good, because they
do not shew the Time when the Complaint was made, which
they ought to do, because such Certificate is in nature of an
Indictment, and traversable. 2 *Roll. Rep.* 39.

No other Justice or Justices (except B. R.) but he or
they before whom the Force is found can award Restitu-
tion.

But then the Force must be found by an Inquisition of
twelve Men, or otherwise the Justice may be punish'd; but
the Entry and holding with Force being found, the Justice
may re-seize by Vertue of the Statute of 8 H. 6. *cap.* 9. and
restore the Party to his Possession.

Or he may direct his Precept to the Sheriff for that Purpose *Teste* by himself. *Dyer* 187.

And if the Sheriff return, that he cannot make Restitution because he was resisted, he shall be fined, for he may raise the *Posse Com.*

The Justices, upon an Indictment found, may give Restitution to a Freeholder, to a Tenant for Years, or by Copy of Court-Roll; to Tenant by *Elegit*, Statute-Merchant or Staple. 21 *Jac. cap.* 15.

One Jointenant or Tenant in Common putteth out the other, *Quere* what the Justice can do there, because his Entry and Possession was lawful.

If an Indictment be removed, and no Prosecution the next Term, the Court may award Restitution.

A Man cannot justify the breaking open an House, by Ver- tue of a Warrant from a Secretary of State; and no House can be broke open, unless there is a Civil Officer present.

But if a Man hath a Warrant to apprehend another, and he breaks open a Door to execute it, and so mistakes the Law, he is not guilty of Felony, for that was not his Design. Now since there must be a felonious Intent to make a Man guilty of Felony, and there being no such Intention appearing, the Party is only a Trespasser.

If after a Door is broke open, one of the Company steals any Thing, 'tis Felony only in him, and not in the rest, un- less they were assenting to it.

The Record of a Forcible Entry upon the View of a Justice, upon the Statute of 15 R. 2.

Middl. ff. **E**GO H. P. Armig. unus Justiciar. Dom. Reg. nunc ad pacem in Com. præd. conservand. assign. certifico quod 5 die Jan. Anno Regni, &c. J. O. de H. in Com. præd. Yeo- man, questus est mihi quod T. P. de, &c. Et alii perturbat. pacis dictæ Dom. Regin. mihi ignoti 5 die Januarii, Anno supradicti in unum Messuagium cum pertin. adtunc & adhuc existen. liberum tene- ment. R. B. Armig. ac in possessione præd. J. O. pro termino 7 An- norum adhuc ventur. scituat in H. præd. in Com. prædict. pacifice & quiete intraverunt & postea, (viz.) præd. 5 die Januarii, Anno supradicti apud H. præd. in Com. præd. prædictum J. O. a prædicto messuagio vi & armis, (viz.) baculis, gladiis, &c. illicite & manu forti expuler. ejecer. & amover. & præd. J. O. sic deinde expuls. ejet. & amot. a messuagio præd. cum pertin. ut præfertur vi & armis il- licite & manu forti adtunc & ibidem extratenuer. & detenuer. ad grave dampnum præd. J. O. & contra pacem dictæ Dom. Regin. nunc ac contra formam Statut. in hujusmodi casu edit. & provis. & unde præd. J. O. petit a me remedium & in hac parte relevari;

Forcible Entry.

Ego igitur prefat' H. P. immediate in propria persona mea accessi ad messuagium præd' cum pertin' & adtunc & ibidem invenibam præf' T. P. præd' messuagium cum pertin' a præd' J. O. vi & armis illicite & manu forti extrahen' & detinen' contra formam Statut' præd' super quo ego prefat' H. P. adtunc & ibidem causaui præd' T. P. capi & arrestari & ad Gaolam de H. in Com' prædict' mit. ti ibidem remanere sub salva custodia donec inveniret coram me sive aliquo Justic' dictæ Dom' Reg' ad pacem in Com' præd' conservand' assen' sufficien' securitatem personaliter comparere ad proximam Generalem sessi. n' pacis dictæ Dom' Reg' in Com' præd' tenenda ad respondend' transgr' & contempt' præd' ac quod interim se bene gererit. In cujus rei testimonium, Ego prefat' H. P. huic certificationi manum & sigillum meum apposui 7 die Januarii, Anno Regni, &c.

Another Record of Forcible Entry.

Suffex ff. **M**emoranda quod T. P. de, &c. 7 die Januarii, Anno Regni, &c. questus est mihi E. S. Mil' un' Justiciar' dictæ Dom' Regin' ad pacem in dicto Com' conservand' assign' quod J. O. & J. S. de, &c. & alii pacis dict' Dom' Reg' perturbatores ignoti in domum mansionalem ipsius T. P. de H. præd' manu forti ingressi sunt & ipsum T. P. inde * disseisverunt ac eand. m. domum manu forti & armata potentia adhuc extraherent ac proinde petit a me sibi in hac parte remedium apponi qua quidem querimonia & petitione audita ego prefat' E. S. immediate ad dictam domum personaliter accessi ac in eadem domo adtunc inveni prefat' J. O. & J. S. domum illam manu forti & armata potentia, viz. baculis, gladiis, bombardis, &c. tenentes contra formam Statut' in hujusmodi casu edit' & provis' ac propterea ego prefat' E. S. prædict' J. O. & J. S. adtunc & ibidem arrestavi proximæque Gaolæ dictæ Dom' Regin' apud H. in dicto Com' duci feci ut de dicta manu forti & detentione per visum & recordum meum convictus ibidem moraturus quousque finem dictæ Dom' Regin' pro transgr' suis præd' fecerint Dat' apud H. præd' sub sigillo meo die & Anno supra dictu.

* If it be a Freehold, otherwise it must be expul. eject. & amover.

A Precept to the Sheriff in the Nature of a Venire Facias, to summon a Jury.

Upon the Statute of 3 H. 6.

Suffex ff. **J.** P. Baronetius unus Justiciar' Dom' Reg' ad pacem in Com' præd' conservand' assign' Vicecomiti ejusdem Com' salutem ex parte Dom' Reg' tibi mando quod Venire Facias coram me apud V. in Com' præd' octavo die Januarii prox' futur' viginti quatuor probos & legales homines de vicineto de V. prædict'
 quorum

quorum
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quorum quilibet habent 40 s. terrarum & tenementorum vel redditus, ad minus per Annum ultra reprisas ad inquirendum super Sacrum suum pro dicta Domina Regina de quadam ingressu manu forti factum in messuagium cuiusdam J. O. apud V. præd. contra formam Statuti in huiusmodi casu editi & provis. & videas quod super quemlibet juratorem per se in hac parte impanellandum viginti solidos de exitibus ad præfat. diem retornes & hoc nullatenus omittas sub pena viginti librarum, & habeas tibi tunc hoc præceptum: Teste me præfat. J. R. 30 die Januarii, Anno Regni, &c.

An Inquisition upon the Force.

Inquisitio capta pro Domina Reg. apud L. in Com. Suffex, octavo die Januarii, Anno Regni, &c. per Sacrum. C. L. R. B. H. S. W. N. &c. coram J. P. Baronet un' Justiciar. dict. Dom. Regine ad Pacem in Com. prædict. conservand. assign. necnon ad diversas Felonias, Transgressiones & alia Malefacta in eodem Com. perpetrata audiend. & terminand. qui dicunt super Sacrum suum quod J. O. de H. in Com. præd. Yeoman, legitime & pacifice seissitus fuit in Dominico suo ut de fredo de & in uno messuagio cum pertin. in L. præd. & possessionem suam pacificam præd. continuavit quousque J. R. de, &c. & J. S. de, &c. & alii Malefactores ignoti tricesimo die Decembris ult. præterit, vi & armis, viz. baculis, gladiis & bombardis in Messuagium præd. cum pertin. intraverunt ac ipsum J. O. inde disseisiverunt & manu forti expulerunt & sic inde expulsus & disseisitus ab eodem messuagio præd. tricesimo die Decembris usque diem captionis huius Inquisitionis manu forti & armata potentia extraherunt & adhuc extraherent in magnam perturbationem pacis dict. Dom. Regin. ac contra formam Statuti in huiusmodi casu editi & provis. ubi nullus eorum nec aliquis alius cuius statum ipse vel ipsi habent aliquid in præd. messuagio cum pertin. vel aliqua inde parcella habuit vel habuerunt infra tres Annos proximos ante ingressum suum præd. nec aliquo alio tempore ad notitiam jurat. præd.

The Entry and Expulsion being thus found by the Jury, the Justice may make a Precept to the Sheriff for Restitution, thus:

Suffex ff. J. P. Baronet, and Justice of the Peace for the said County, to the Sheriff thereof, Greeting: Whereas by a certain Inquisition taken before me the Eighth Day of January last past, at V. in the County aforesaid, upon the Oath of C. L. R. B. &c. according to the Form of the Statute in that Case made and provided: It was found, That J. B. and J. S. and others, (present in the Inquisition) as by the said In-

Forcible Entry.

Inquisition of Record doth more fully appear: These are therefore in Her Majesty's Name to require you to go to the said Messuage and other the Premises, and cause the same with the Appurtenance to be resealed, and the aforesaid J. O. to be restored thereunto, and to his full Possession thereof, in as large and ample Manner as he was before the said Entry was made. And hereof fail not. Given under my Hand and Seal, &c.

A Mittimus of such who hold Lands, &c. by Force.

Suffex ff. **T**. P. Esquire, a Justice of Peace for the County aforesaid; To the Keeper of the Common Gaol at H. in the said County, or to his Deputy there. Whereas on this present 9th Day of *January*, in the Year 1703, Complaint hath been made unto me by *W. R. of, &c.* of a Forcible Entry made by several Persons into his Lands at, &c. I went immediately to the said Lands, where I found *R. W. J. R. T. O. and S. P. of, &c.* Labourers, forcibly and with strong Hands holding the Premises, against the Form of the Statute in that Case made and provided: Therefore I send you herewithal the Bodies of the said *R. W. J. R. &c.* being convicted of the said forcible Holding by my own View, commanding you in Her Majesty's Name to receive them into your Gaol and Custody, and there safely to keep them until they shall be from thence deliver'd by due Course of Law. Given under my Hand and Seal the Day and Year first above-written.

If the Proceedings are at the Sessions by Way of Indictment, then the Form is,

Suffex ff. **J**ur. &c. quod J. O. & J. S. de, &c. assumptis & associatis sibi ipsis aliis Malefactoribus & Pacis Dom. Regina perturbator. modo hostili armatis quorum nomina Juratores præd. penitus ignorant nono die Januarii, Anno, &c. apud H. in Com. præd. vi & armis, viz. baculis, gladiis, bombardis lapidibus & aliis armis defensivis & invasivis in unum* messuagium cum pertinent. in H. præd. † super pacificam possessionem cujusdam R. N. intraverant & quilibet eorum intravit, de quo quidem messuagio præd. R. N. || adtunc & adhuc possessionatus fuit pro termino septem

* If it had been in unum tenementum, it had been naught.

2 Roll. Rep. 46. † If it had been of a Freehold, it should be *adtunc existen. liber. tenementum*, R. N. 1 Mod. 371. || The Word *adtunc* is necessary, because Restitution is to be awarded. 1 Vent. 23. Yet if the Indictment begin with the Day, Time and Place, all which follows shall be taken to be the same Time. 1 Bull. 177. Yelv. 28.

Anorum adhuc ventur' & prad' J. O. & J. S. & alii Malefactores prad' vi & armis prad' R. N. a possessione sua prad' ejecerunt expulerunt & amoverunt & prafat R. N. sic inde expulsum a prad' messuagio cum pertin' illicite de manu forti adtunc extratenuer' & adhuc extratenent, contra Pacem dict' Dom' Regin', &c. & contra formam Statuti in hujusmodi casu edit' & provis'.

* The Omission of those

Words had made the Indictment naught.

There are many Niceties in drawing this Indictment; and first, as to the Entry into Lands, 'tis always necessary to say, *adtunc existens liberum tenementum*; but to say, *adtunc & adhuc* is repugnant, because it cannot be *adhuc* his Freehold, for he is disseised. 3 Bulst. 68. Noy 131.

In the Case of a Freehold. Palm. 426. Latch. 109. Cro. Eliz. 754. Het. 73. March 6. 2 Roll. Rep. 65.

But it ought to conclude with *extratenuer' & adhuc extratenent*.

Yet in my Lord Rolls, we have a Case of an Indictment that was quashed for not setting forth, that the Entry was upon such a Place *adhuc existens liberum tenementum*, and the latter Authorities seem to agree with him.

The Offender must be named of a *Vill* and County, because Process of Outlawry lieth against him for this Offence.

Sid. 102. Cro. Eliz. 32. 1 Bulst. 201.

Then the Place on which the Entry was made, must be certain; and therefore 'tis laid to be on a *Road* of Land, 'tis void.

Yet for entering into a Close, and not saying how many Acres, was held good.

Cro. Eliz. 474. 1 Mod. 73.

It must always set forth the *Estate* of the Party grieved, and therefore if 'tis for a Term of Years, 'tis not sufficient for the Party to set forth, that *possessionatus fuit* generally, but he must shew for how many Years; if it be for a Freehold, then he must say, *existens liberum tenementum*: 'Tis true, formerly it hath been held, That those Words are implied by the Word *disseisvit*, because a Man cannot properly be *disseised* of any Thing but a *Freehold*, but it hath since been adjudg'd otherwise. 2 Leon. 102. 4 Leon. 197. 1 Ventr. 306. contra.

It must likewise be *inde disseisvit*, for if that Word is left out, 'tis naught. Noy 120.

But if the Word *illicite* is left out, that will not hurt it; because *disseisvit* implied it. Noy 125.

By Tenant by Elegit.

Suffex ff. *Jur'*, &c. quod R. J. de H. in Com' prad', Yeoman, coram Justiciariis Dom' Regin' nunc de Banco de Termino Sancti Hillarii, Anno Regni sui quinto, per judicium ejusdem Curia recuperavit versus T. P. de L. in Com' prad' Taylor, quodam debitum & damna attingen' ad 5 l. & prad' R. J. in Com' prad'

præd' pro satisfactione ejusdem debiti & damnorum faciend' elegit omnia bona & catalla *præd'* T. P. (præter Boves & Afros de Caruca sua) necnon medietatem omnium terrarum & tenementorum ejusdem T. P. juxta formam Statuti inde edit' & provi' sibi liberari, cumq; etiam R. F. Miles & Baronettus nuper Viscomes Com' *præd'* Virtute Brevis Domina Regina *præd'* de Elegit, ex parte R. J. *præd'* eidem tunc Vicecomiti Com' *præd'* direct' geren' dat' 23 die Januarii, Anno, &c. secundum exigentiam ejusdem Brevis deliberat' *præd'* R. J. unum messuagium in L. *præd'* annui valoris quinq; librarum existent' medietatem omnium terrarum & tenementorum de quibus *præd'* tempore Judicii *præd'* reddit' aut unquam postea fuit seistus in Com' *præd'* tenend' sibi & assign' fuit ut liberum tenementum suum juxta formam Statut' in hujusmodi casu edit' & provi' donec idem R. J. *præd'* 50 l. juxta valorem *præd'* de messuagio *præd'* levaverit virtute cujus *præd'* R. J. in messuagium *præd'* cum pertin' intravit & fuit inde possessionat' ut tenens per Elegit, & possessionem suam inde quiete & pacifice continuavit, quousq; J. O. de, &c. & alii Malefactores ignoti 24 die Januarii, Anno, &c. vi & armis, viz. Baculis, &c. in messuagium *præd'* cum pertin' intraverunt, & quilibet eorum intravit & ipsum R. J. manu forti & vi armata adtunc à possessione sua *præd'* inde ejecerunt, expulerunt & amoverunt & eundem R. J. sic expulsum ejectionem & adtunc amotum ab eodem messuagio cum pertin' à *præd'* 24 Januarii, Anno supradict' usq; hunc diem cum hujusmodi fortitudine & vi armata extratenuerunt contra Pacem Dom' Regine nunc, ac contra formam Statut' in hujusmodi casu edit' & provi'.

By a Copyholder,

Sussex ff. Jur', &c. quod T. P. de H. in Com' *præd'* Gen' seist' tua fuit in Dominico suo ut de Feodo ad voluntatem Domini secundum cons' manerii de H. in Com' * *præd'* de uno messuagio cum pertin' in H. *præd'* ut tenens per † copiam Rotulorum Curie ejusdem manerii & sic inde † seistus (existen' seisinam & possessionem suam *præd'* pacifice & quiete diu continuavit quousq; J. S. de H. *præd'* Blacksmith, 24 die Januarii, Anno, &c. in messuagium *præd'* cum pertin' vi & armis, viz. Baculis, &c. intravit & ipsum T. P. de possessione & seisina sua *præd'* inde manu forti & armata potentia expulit & amovit & ipsum T. P. sic expulsum & amotum ab eodem messuagio cum pertin' à *præd'* 22 die Januarii, Anno supradict' usq; ad hunc diem cum hujusmodi fortitudine & armata potentia extratenuit & adhuc extratenet contra Pacem Domina Regina nunc & contra formam Statut', &c.

* Latch.

182.

† Vent. 89.

¶ If it had been seist' & possessionatus fuit, it had been naught, because uncertain.

1 Vent. 109.

Forfeiture.

Forfeiture.

THis is occasioned by the Transgression of some Penal Law, whereby the Offender loseth his Lands and Goods.

But this Difference is to be observ'd, That where Lands are forfeited, it shall relate to the Time of the Offence committed; but in case where Goods and Chattels are forfeited, there shall be no Relation, for the Goods of the Felon are his own till Conviction or Attainder; and the Sheriff or other Officer ought not to remove them, because the Property is not alter'd till Conviction; but usually they secure the Goods of the Felon as soon as he is apprehended; but this is expressly against the Statute of 1 R. 3. cap. 3. by which 'tis enacted, That none shall seize the Goods of any arrested for Suspicion of Felony, before he is convicted or attainted thereof, upon Pain to forfeit double the Value of the Goods, &c. to be recovered by the Party grieved, in an Action of Debt, &c.

If it is found by the Coroner's Inquest, that the Party *fugam fecit*, he forfeits his Goods notwithstanding he should be afterwards acquitted of the Felony by the Petty-Jury, and they should find that he did not fly for the same: So where a true Man is pursued as a Felon, and he fleeth and waiveth his own Goods, those are forfeited as if they had been stolen; for *fatetur facinus qui iudicium fugit*.

Now the Reason of the Forfeiture in the first Case, is because the Queen hath a Prerogative to take the Advantage of that Record which is most for her Interest, and that is the Record of the Coroner. *Stamf. Pl. Coron. 183. B.*

If a Man is acquitted of the Felony, but the Jury find *quod fugam fecit*, he shall lose his Goods which he had at the Time of the Atquittal, and not at the Time of the Flight. *Gouldf.*

1357

| | <i>Lands.</i> | <i>Goods.</i> |
|-------------|---|---|
| In Treason. | <div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle; padding-left: 5px;"> Lands in Fee or in Tail,
or for Life or Years, af-
ter Conviction or Attain-
der. </div> </div> | <div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle; padding-left: 5px;"> All the Goods
and Chattels of
what Kind so-
ever. </div> </div> |

| | <i>Lands.</i> |
|-----------------------|---|
| In Petit-
Treason. | <div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle;">{</div> <div style="display: inline-block; vertical-align: middle; padding-left: 5px;"> In Fee, for a Year and a
Day.
In Tail, during Life of
the Offender. </div> </div> |

In

Forfeiture. Forgery.

Lands.

Goods.

In Felony. } In Fee-Simple, for a Year and a Day from the Time of the Felony committed, and the Profits during Life of the Offender. } Goods and Chattels from the Time of the Attainder or Conviction.

Goods only.

In Manlaughter and *Felo de se*, Petit-Larceny. } Offenders in these Cases forfeit Goods and Chattels.

Goods only.

In Chance-med-ly, and *Se defendendo*. } Offenders forfeit Goods and Chattels, but they may have Pardon of Course.

Forgery.

§ Eliz. c. 14. **T**his is an Offence at the Common Law, and likewise punishable by a particular Statute.

If the Indictment is at Common Law, the Offender convicted must stand in the Pillory; be fined and imprisoned during the Pleasure of the Court. *Ray*. 81.

Mr. Dalton is of Opinion, That Justices of Peace cannot meddle with these Offenders, because they cannot take Notice of the first Conviction.

Besides, by the express Words of the Statute of § Eliz. Justices of Assize, and of Oyer and Terminer, are to hear and determine this Offence. *Cro. Eliz.* 87, 601, 697.

Stiles 363.

Since the making this Statute, few Indictments have been brought for Forgeries at Common Law; some there are, *viz.* One *Howell Gwynn* cut off a dead Man's Hand, and put a Pen and Ink in it, and signed and sealed a Deed with the Hand, and made Oath that it was the Hand-writing of B. and that he sealed and delivered the Deed; he was convicted and fined 100 l. and was to stand in the Pillory two Hours at the Hall-Gate.

Raim. 81.

So one *Farmer* was indicted for a Forgery; he demurred to the Indictment, and it was found against him, and had

Judgment to stand in the Pillory, was fined 100 l. and imprisoned during Pleasure.

But since the Statute, many Indictments have been brought to punish an Offender of this Nature, who for the first * Offence is to be set in the Pillory in some Market-Town, to have his Ears cut off there, and his Nostrils slit, and shall forfeit the Profits of his Land to the Queen during his Life, and shall be committed also for Life.

- * That is, for forging,
1. False Deeds.
2. Writing sealed.
3. Court-Title

Roll. 4. Will : To the Intent that the Freehold of the Lands on the Right or Title thereof, may be troubled or charged.

Every Indictment brought upon the Statute must pursue some of the Words of it; as if a Man is indicted for forging a Will, by which a Lease for Years is conveyed; this is not within the Statute under the Word *Will*, because it doth not charge the Freehold, or disturb the Right thereof; and the Word *Will*, in the Statute, relates only to such Wills which convey a Freehold; but it comes under the Words *Writing sealed*, and therefore shall be punished by that Law.

Dyer 306

Four Years after the making of this Statute, one *Taverner* was convicted for forging a Customary of a Manor, in which he had inserted several false Customs, and had put the Hands and Seals of Eleven Tenants to it; and it was proved that he did it wittingly, subtilly, and fallly; and this was held Forgery within the Statute. *Dyer* 322. B.

In the next Paragraph, there are other Offences mentioned.

- | | | | | |
|----------|---|---|---|--|
| Forging, | { | 1. Lease for Years, | { | of Lands not Copyhold. |
| | | 2. Annuity, | | 1 <i>Lutwich</i> 190. Action |
| | | 3. Obligation, | | on this Statute for double Costs. |
| | | 4. Bill, | | |
| | | 5. Acquittance, | | <i>Sid.</i> 278. fined 100 l. and bound to good Behaviour. |
| | | 6. Release, or other Discharge of a Personal Thing. | | |

And there is some Variation in the Punishment of these Offences, viz. *Pillory*; but the Offender loses but one of his Ears, and is to suffer but a Year's Imprisonment without Bail.

The second Offence in all the Cases above-mentioned, is Felony; but this seldom or never happens.

Now forging a Deed, by which Goods and Chattels are conveyed, are within neither of these Paragraphs; first, because it doth not concern a Freehold, and 'tis neither a Bill, Bond, Acquit-

; Leon. 170.

Acquittance or Discharge of a Personal Thing, and so not within the Words of the Statute.

Moor 619. The Father bound his Son Apprentice, and gave Bond of 100 l. for his Good Behaviour; the Master razed out *Libri*; and put in *Marcis*, and this was held not within the Statute, because he did a Prejudice to none but himself; that is, by making the Bond void, or at least by putting in a lesser Sum for a greater; but if he had increased the Sum, it had been otherwise.

Noy 42. Forging an *Assignment* of a Lease is not within the Statute, because it doth not charge the Lands, but only *transfers* an Interest which was in Being before.

Moor 655. But making a Feoffment, though Livery and Seisin was not endorsed when the Deed was delivered, and afterwards selling the Land for a valuable Consideration to another, and the endorsing Livery on the first Deed; this was held Forgery both in the Feoffor and Feoffee, because it was to deceive an honest Purchaser.

Noy 18. Moor 760. The Testator appointed a Man to write his Will, and to insert such a Clause, which he omitted, this is not Forgery; so if he write a Will without any Direction, and bring it to the Testator, who is not of perfect Memory, and he signs it: But if the Devisor directs a Gift to one for Life, Remainder to another in Fee, and the Writer omits the Estate for Life, so that the Remainder vests immediately upon the Death of the Devisor; this is Forgery.

Indictment for Forging a Deed.

If the Information and the forged Lease vary in the Name of the Lands, 'tis void; but 'tis material to allege some Parcel of Land, which may certainly be proved; and as to that, you may say, *Inter alia*. Hob. 272.

Suffex ss. *Jur'*, &c. quod R. H. nuper de H. &c. 12 die Maii, Anno Regine, &c. apud H. *præd.* in Com. *prædict.* ex sua propria mente & falsa imaginatione & covina quoddam falsum factum, viz. quandam indenturam per quam quidam R. B. bargamizaret & venderet omnes terras suas vocat. &c. cum pertin. in H. in Com. *præd.* cuidam T. B. scienter & falso fabricavit fecit & eandem indenturam adtunc & ibidem publicavit & legi fecit & in evidentiam ostendit, ad molestand. & perturband. statum possion. & titulum & interesse *præfat.* R. B. in terris & tenementis *præd.* per quod idem R. B. de possession. titulo & interesse suis ad terras & tenementum *præd.* cum pertin. pregravat. & vexat. existit in dicta Dom. Regina contemptum & ipsius R. B. dampnum & gravamen ac contra formam Statut. in hujusmodi casu edit. & provis. necnon contra Pacem dict. Dom. Regine. Coron. & Dignitatem suas.

Indictment for Forging a Bond.

Suffex ff JUR' &c. quod (as before) quoddam falsum scriptum obligatorium per quod quidam W. B. de, &c. die & Anno supradicto obligasset se (to the Defendant) in summa Centum Librarum solvend' eidem (the Defendant) ad certum tempus in eodem falso scripto obligatorio limitat. scienter subtiliter & falso fabricavit ac falsum scriptum obligatorium præd' sic subtiliter & scienter fabricat' postea, scil. decimo die Maii, Anno Regni, &c. apud H. præd' in Com' præd' quasi verum scriptum obligatorium ejusdem W. B. sciens scriptum præd. falsum & fabricatum esse publicavit & in evidentiam ostendit, ea intentione ad habend. & recuperand. de eodem W. B. præd' Centum libras ad grave dampnum ipsius W. B. ac contra formam Statut. in hujusmodi casu edit. & provis. necnon contra pacem dictæ Dom. Reg. nunc Coron. & Dignitat. suas.

Foretallers, Regrators, and Engrossers.

A Foretaller is called, by my Lord Coke, *Pauperum Depressor* & totius Communitatis & patriæ publicus inimicus, and therefore is punishable at Common Law.

By the Statute 5 & 6 Ed. 6. he is thus described: viz.

5 & 6 Ed.
6. cap. 14.

1. He who buys or contracts for any Merchandize, Victual, or any other Thing whatsoever, * *in the Way*, before it shall be brought to Market, &c.
2. He who causeth the same to be so bought.
3. He who dissuades People from bringing such Commodities to Market, &c.
4. He who perswades them to advance the Price after brought thither: In either of these Cases he is a Foretaller.

* Roll. Rep.
1 Part. 422.

A Regrator, is he who buys Butter, Calves, Candles, Capons, Cheese, Chickens, Conies, Fish, Grain, Geese, Hens, Lambs, Pidgeons, Pigs, Sheep, Swine, Tallow, or other dead or alive Victuals brought to Market to be sold, and selleth the same again in the same Manner, or in any other within four Miles thereof.

Regrator
what.
13 Eliz.
cap. 25.
5 Eliz. c. 12.
5 Ed. 6.
cap. 14.

Engros-
sing the
same.

He who gets into his Possession by Buying or Contract, (unless by Grant of Land or Tythes) Corn on the Ground or other dead Victuals, to the Intent to *sell them again*, except Buyers of Barley or Oats to make Malt and Oatmeal.

But Victuallers not foretalling, and Badgers and Drovers not abusing their Licences, and Buyers of Foreign Commodities not being Salt or Fish, are excepted.

An Engrosser being thus defined by the Statute, *viz.* One who gets into Possession, Corn, &c. to the Intent to sell the same again; the Question was, If a Man buy Meal, and convert it into Starch, whether this was within the Statute, because it doth not remain the *same*, but is altered by a Trade? And held not: But if he buys Corn, and converts its into Meal, and sells it, this is punishable by the Statute; because the converting it into Meal is not Alteration of the Corn, for it remains the same Corn still.

My Lord Coke says, That he rarely met with this Word before this Statute, and agrees, That 'tis an Offence only by the Consequence; and therefore the Indictment ought to set forth, that the Things bought were sold again in the same Market, and thereby made dearer.

Fishmongers and Butchers are not within this Law, if they buy only Things belonging to their respective Trades; but if they buy *ex intentione ad revendend. contra formam Statuti*, 'tis punishable. *Cro. Car. 1 Roll. Rep. 11.*

But the Indictment must be certain, and therefore it hath been held not good for engrossing *magnam quantitatem Straminis & Feni*, or *diversos cumulos Triticici*; for it should be alleged, how many Loads of Hay and Straw, and how many Bushels of Wheat. *Cro. Car. 381. 1 Roll. Rep. 134.*

It hath been a Question, Whether Salt can be properly called dead Victuals within this Act; but 'tis held it may. *Cro. Car. 232.*

2 Cro. 214.

But Apples, Plums and Hops are not.

There are other Tradesmen, as well as *Fishmongers* and *Butchers*, which are not within this Statute; as *Poulterers* buying any Thing concerning their Trade, and selling it by Retail at reasonable Prices; and Innholders and Victuallers buying Wine or any Thing for the Sustenance of Man, and selling it in their Houses.

And it is to be observed, that none of these Offences were punishable before this Statute, and now the Prosecution must be within two Years after the Offence; and by the express Words in the Act, Justices in Sessions have Power to determine the same.

Punish-
ment.

Upon Conviction at the Quarter-Sessions, either by the Oath of two Witnesses, or Presentment by the Jury, the Offender loseth,
1. For

1. For the first Offence, the Goods so bought, and must be committed for two Months without Bail.

2. For the second Offence, double the Value of the Goods, &c. and must be committed for 6 Months.

3. For the third Offence, loseth all his Goods, must stand in the Pillory, and be committed during the Pleasure of the Queen, but the Prosecution must be within two Years after the Offence: One Moiety of the Forfeitures goes to the Queen, and the other Moiety may be levied by a *Writ Facias* or *Capias* by the Justices, to the Use of the Prosecutor.

Which see in Indictments.

An Indictment for Forestalling.

Suffex ff JUR', &c. *quod cum quidam T. P. de H in Com' præd' Yeoman, possessionat. fuit de viginti porcis u' de bonis & catallis suis propriis & sic possessionat. existen. quidam J. O. de H. præd' in Com' præd' Yeoman, quarto die Februarii, Anno, &c. apud H. in Com' præd' & diversis aliis diebus præfat' T. B. obtinebat cum dictis viginti porcis venien. erga niereat. de L. in Com' præd' ibidem porcos præd. vendend. & quod ipse idem J. O. præfat' T. P. adtunc & ibidem extra mercat. præd' viginti porcos venien. mercat præd' emit. & Forestallavit per quod prædict' T. P. præf. porcos ad præd' mercat' non adduxit in contemptum Domina Regine nunc ac contra formam Stat. in hujusmodi casu edit. & provis. ac contra pacem dictæ Dom. Reg. &c.*

* If those Words should be left out, 'tis ill. 1 Roll. Rep. 421.

An Indictment against Regrators.

Suffex ff JUR', &c. *quod J. O. de H. in Com' præd' Yeoman, 4 die Febr. Anno, &c. apud L. in Com' præd' in quodam mercat. tunc ibidem tento quinquaginta Agnos pro decem libris bona & legalis moneta emit regratavit obtinuit & nactus est in manus & possession. suas de quodam E. D. qui præd. quinquaginta Agnos ad eund. mercat. adtunc. adduxisset vendend. & quod immediate postea, scil. dicto quarto die Februarii, Anno supradicto idem J. O. in præd' aperto mercat' præd' quinquaginta Agnos cuidam T. S. pro duodecim libris similis legalis moneta Angliæ illicite vendidit contra formam Stat. in hujusmodi casu edit. & provis. & contra pacem, &c.*

An Indictment against Ingrossing Corn.

Suffex ff JUR', &c. *quod J. H. de H. in Com' præd' Yeoman, 4 die Februarii, Anno, &c. apud B. & K. in Com' præd' emit & ingrossavit de J. A. & R. G. & aliis ligis Dom' Reg.*

centum quarterias tritici pretii ducentarum librarum & præd' centum quarterias tritici in domibus suis accumulavit & custodivit ea intentione ad revendend. ad suum libitum per quod triticum in mercatis & villis Com' præd' multipliciter carius & rarius fuit in grave dampnum subditorum dictæ Domina Regina ac contra formam Statut. in hujusmodi casu edit. & provis. ac contra pacem, &c.

fruit-Trees; See Hedge-breakers, and Orchards.

Fine.

WHere a Fine is set by any Statute, in such Case, if the Offender confess the Indictment, or is found guilty, the Court cannot mitigate the Fine; but if he submit with a Protestation of his Innocency, and *quis noluit placitare cum Dom. Reg.* put himself upon the Favour of the Court, they may then set a less Fine than enjoin'd by the Statute, &c.

Fullers-Earth.

After the 24th Day of June, 1698. it shall not be exported; Penalty 1 s. for every Pound Weight. 9 & 10 Will.

Games.

33 H.8.c.9.

By the Statute of 33 H. 8. one Justice may commit those who keep unlawful Gaming-Houses, till they find Sureties by Recognizance not to keep such Houses any more; they likewise forfeit 40 s. to be divided between the Queen and Prosecutor.

He may also commit, without Bail, any Person playing there, till he enter into a Recognizance not to play any more; and besides, he forfeits for every Offence 6 s. 8 d.

And in order to apprehend such Persons, the Statute giveth the Justice Authority to enter into any common Place where unlawful Games are suspected to be used.

Bear-

Games.

309

| | | | |
|--------------|----------------|------------|--------------------------|
| Bear-bating. | Cock-fighting. | Nine-pins. | What Games are unlawful. |
| Bull-bating. | Coits. | Tennis. | |
| Bowling. | Dice. | | |
| Cards. | Foot-ball. | | |

And by the Statute of 39 *Eliz. cap. 4.* Fencing and Stage-Plays are unlawful Games, for the Offenders in that Kind are made Vagabonds.

| | | | |
|--------------|-------------|-----------------|---------------------------------|
| Apprentices. | Husbandmen. | Servants of all | Persons prohibited by this Law. |
| Artificers. | Labourers. | Kinds. | |
| Fishermen. | Mariners. | Watermen. | |

These Persons must not play at any of these Games except at *Christmas*; nor then, but in their own Houses, and Servants in their Masters Houses, and by their Leave.

The Forfeiture is 20 *s.* for every Offence, to be divided as aforefaid.

But a Man of 100 *l. per Annum*, may License his Servant to play at Bowls or Tennis.

One Justice may commit for cheating at Play. *Cro. Car.* 235.

Under this Title, it may not be improper to mention the late Act for preserving the * Game; by which it is enacted, That all the Laws for the Preservation of the Game shall be in Force: And moreover, That

| | | |
|------------------|----------|-------------|
| Alchouse-keeper, | Chapman, | Inn-keeper, |
| Carrier, | Higlar, | Victualler, |

having in his Custody, or who shall buy or sell, or offer to sell, after the first Day of *May*, 1707,

| | | |
|---------|-------------|------------|
| Grouse, | Heath-Game, | Partridge, |
| Hare, | Moor, | Pheasant, |

forfeits for each the Sum of 5 *l.* one Half to the Informer, the other to the Poor of the Parish where the Offence was committed; and this is to be levied by Vertue of a Warrant under the Hand and Seal of the Justice of Peace before whom the Offender shall be convicted; and for want of Distress, the Offender must be committed to the House of Correction for three Months for the first Offence, without Bail, and 4 Months for the second Offence.

The Conviction is to be made before a Justice of Peace, either upon View, or upon Oath of one Witness; but it must be within three Months after the Offence done.

'Tis likewise enacted, That if any one who *destroys* the Game, and shall within three Months discover the Alehouse-keeper, &c. who hath bought or sold, or offered to buy or sell, or had in his Possession any of the said Game, so as the Person may be convicted thereof, such Discoverer shall be discharged of the Penalties, and be entitled to a Moiety of the Forfeiture.

The like Conviction and like Punishment for any Person, not qualified, to keep Grey-hounds, Hayes, Lurchers, Setting-Dogs, Tunnels, or any other Engine whatsoever to kill the Game. And no *Certiorari* is to be allowed, unless the Party convicted shall be bound to the Prosecutor in the Sum of 50 l. with such Sureties as the Justice before whom he was convicted shall think fit; Conditioned to pay the Prosecutor full Costs, to be ascertained upon Oath within 14 Days after the Conviction, or a *Procedendo* allowed.

But a Carrier is not accomptable for any Game sent up by a Person qualified to kill it.

'Tis farther provided, That any Justice of Peace, or Lord of a Manor (but within his Manor) may take away any Hare, or any other Game, or any Dog, Net, &c. from any Higlar, Carrier, or any other Person not qualified to kill or keep the same.

And a Lord of a Manor may likewise (under his Hand and Seal) give Power to a Game-keeper to kill Game within his Lordship: But such Game-Keeper must not sell any Game without the Consent of his Lord; if he doth, then upon Complaint of the said Lord, and upon the Oath of one Witness before a Justice of Peace, he shall be sent to the House of Correction for three Months.

And because the burning of Heath, Ling, and Brakes or Fern, in the Forrest of *Sherwood* in the County of *Nottingham*, doth destroy the Game; therefore if any Person shall burn the said Heath to Ashes, either in that Forest, or in any other waste Ground, Common, or Land, within that County, without Leave from the Owner of the Soil, shall forfeit to such Owner 10 s. And any Person buying such Fern Ashes of any unlicensed Person, forfeits 10 s. for every Peck; one Moiety to the Poor of the Parish where the Offence shall be committed, and the other to the Informer.

The Conviction is to be before a Justice of Peace, by the Oath of one Witness, and the Penalty to be paid immediately; and in Default thereof, the Party is to be committed to the House of Correction for one Month.

The Act is to be in Force for three Years, from the first of May, 1707. and from thence to the End of the next Sessions of Parliament.

A Warrant against one having a Hare in his Custody.

To the Constable and Headboroughs of the Hundred of H. and to the Keeper of the House of Correction, &c.

Suffex ss. **W**Hereas T. P. of H. in the said County, Higlar, hath on the Day of the Date hereof been duly convicted before me R. B. Esq; one of Her Majesty's Justices of the Peace for the said County, upon the Oath of R. K. of, &c. for that the said T. P. had on the third Day of August last in his Custody, at H. aforesaid, one Hare, contrary to the Statute in that Case made and provided; by Reason whereof, he hath forfeited the Sum of 5*l.* These are therefore to require you, to levy the said Sum of 5*l.* by Distress and Sale of the Goods of the said T. P. rendring to him the Overplus, if any such shall happen to be, the Charge of distreining being first deducted; and that you forthwith pay one Moiety thereof to the said R. K. who first informed me of the said Offence, and the other Moiety to the Poor of the Parish of H. aforesaid, where the same was committed; and for want of such Distress, that then you carry the said T. P. to the House of Correction at L. and deliver him to the Keeper thereof, together with this Precept; who is hereby commanded to receive him into his Custody, and to keep him in the House of Correction for the Space of three Months next ensuing the Date hereof, without Bail or Mainprize, this being his first Offence of this Nature. And hereof fail not, &c. Given, &c.

The like Warrant, *mutatis mutandis*, for-Buying, Selling, or offering to Sale, an Hare, Partridge, or Pheasant; or for keeping or using any Grey-hound, Setting-Dog, Hay, Tunnel, &c. or other Engine, not being qualified by Law to keep it.

A Licence from a Lord of a Mannor to a Game-keeper.

Suffex ss. **I** R. B. Esq; Lord of the Manor of C. in the said County, do hereby give Licence, Power and Authority to R. K. of, &c. to kill any Hare, Pheasant, Partridge, or any other Game, in or upon my said Manor of C. aforesaid, for my Use. Witness my Hand and Seal this third Day of August, in the Year 1709.

A *Mittimus* of a Game-keeper to the House of Correction, for disposing of the Game, &c.

To the Constable, &c. and to the Keeper of the House of Correction.

Suffex ff. **W** Hereas R. K. of, &c. being impower'd under the Hand and Seal of R. B. Esq; Lord of the Manor of C. in the said County, to kill Game in his said Manor for his Use, did on the third Day of *August* last kill one Hare in the said Manor, and did on the next Day sell the same to T. P. of, &c. without the Consent or Knowledge of the said R. B. And whereas the said R. K. hath on the Day of the Date hereof, and upon the Complaint of the said R. B. been duly convicted before me of the said Offence, by the Oath of J. B. of, &c. These are therefore to require you to convey the said R. K. to the House of Correction at L. and to deliver him to the Keeper thereof; who is hereby required to receive him into his Custody, and safely to keep him in the House of Correction for the Space of three Months next ensuing: And hereof fail not. Given under my Hand and Seal, &c.

An Indictment for playing at Bowls, and keeping a Bowling-Alley.

Suffex ff. **JUR'**, &c. quod J. O. nuper de H. in Com. præd' stabularius 4 die Febr. Anno, &c. & continue post præd' 4 diem Febr. Anno supradicto usque ad quintum diem Junii, in dicto Anno apud L. in Com' præd' commun' spheristerium pro suo proprio lucro adtunc & ibidem cum globis illicite ludere custodiebat & conservabat contra formam statut. in hujusmodi casu edit. & provis. & quod T. P. nuper de H. præd' in Com' præd' & quinque alie personæ juratoribus ignotæ præd' 4 die Febr. Anno supradicto præd' commune spheristerium frequentabant & adtunc & ibidem cum globis illicite ludebant contra formam statut. præd' & contra pacem, &c.

Aliter for a Gaming-House.

Suffex ff. **JUR'**, &c. quod T. P. de H. in Com. &c. Taylor, 4 die Febr. Anno, &c. ac diversis aliis diebus & vicibus ante diem hujus inquisitionis commune hospitium apud H. in Com. præd' manutenebat & adhuc & ibidem diversas personas suspect. cum piciis Chartis & aleis illicite ludere permittebat tam in die quam in

in nocte post horas debitas & legitimas ad gravamen inhabitantium ibidem & in malum exemplum aliorum dictæ Domina Regina subditorum & contra formam statuti in hujusmodi casu editi. & provis. & contra pacem, &c.

Garden, See Hedge-breaking.

Stepbounds, See Dogs.

Gaoler and Gaol. Vid. Prisoner.

IF he permits a Felon to escape, 'tis Felony; but if he kill an unruly Prisoner, 'tis not Felony; if by hard Usage, 'tis Murder.

If he refuse to receive a Felon, being sent to him by Warrant, &c. he is finable, and the Township must keep him till the Gaol-Delivery.

Justices in Sessions have Power to tax every Parish in the County, not exceeding 8 *d.* per Week, towards the Relief of the Prisoners in Gaol. This Tax is to be levied every Sunday by the Church-wardens, and by them to be paid Quarterly to the Constables; but if in a Corporation, then to the chief Officer, and the Constables; and such chief Officer is to pay the same every Quarter-Sessions to the Collector, who is to distribute it Weekly to the Prisoners.

And of those Officers neglecting their Duty, forfeits $\frac{1}{2}$ between Queen and Prisoners.

The Majority of Justices in Sessions, upon Presentment of the Grand Jury of the Insufficiency or Inconveniency of the Gaol, may agree upon a Sum, as upon Examination of able Workmen shall be thought necessary, for building, finishing, or repairing thereof.

This Sum, by Warrant under their Hands and Seals, may be levied upon the several Hundreds and Divisions by equal Portions.

This Warrant is to be directed by the Justices in Sessions to the High Constables, Petty Constables, Bailiffs or other Officers, as they shall think fit for levying the same.

Persons refusing or neglecting to pay the Assessment four Days after Demand by the proper Officer who is to collect it, or conveying away their Goods or Estate, &c. one Justice present at that Sessions may make a Warrant to the Collector to levy the Sum assess'd by Distress and Sale, &c. and keep the same four Days before Sale at the Charge of the Owner; and if he doth not pay the Money within the four Days, then the Goods must be appraised by two Inhabitants where they

Gaoler and Gaol.

they were taken, or by other sufficient Persons, and sold by the Collector, returning the Overplus, but deducting the Charge of taking and keeping the Distress.

Justices in Sessions are to appoint one or more Receivers, giving Security to be accomptable for the Money received and disbursed, in Pursuance of such Order as he shall have under the Hands and Seals of the Justices.

Officers refusing to accompt for four Days after Demand, the Justices may commit them without Bail.

The Receipt of the Receiver shall be a Discharge to the other Officers paying the Proportion of their Assessment.

Discharge of Justices under Hand and Seal in Sessions to the Receivers, shall be allowed as sufficient Release in any Court of Law or Equity.

Justices may covenant with Persons for building, finishing or repairing, &c.

Murderers and Felons shall be imprisoned in the common Gaol, and not elsewhere.

Justices in the County have no Power to meddle in Corporations, but Head-Officer only. 14 Eliz. cap. 5.

Prisoner in carrying to Gaol is to bear his own Charges, and the Charge of those who attend him; if he refuse, one Justice may send a Warrant to the Constable of the Place where the Prisoner hath any Goods, to sell as much as by the Appraisement of the Neighbours may be sufficient to satisfy the Charge; and if he hath no Goods, then the Constable and Church-wardens, and two or three of the Parish, or if there are no such Officers, then four of the Chief Men of the Parish where the Felon was taken, may make a Rate, which one Justice may allow, and then 'tis to be paid; and if any Person refuse to pay it, the Justice may send his Warrant to levy it by Distress, &c. and Sale after Appraisement. 3 Jac. cap. 10.

Guns.

33 H.8.c.6.
who may
keep them,
who not.

See Dogs.

22 & 23
Car.2.c.25.

NOne under 100 *l. per Annum* of Inheritance, or Lease for 99 Years of 150 *l. per Ann.* may keep Guns or Pistols; he who hath so much by the Year, may take a Gun from him who hath not, and break it, or forfeits 40 *l.* He who keeps a Gun, not qualified, forfeits 10 *l.*

So likewise none must travel with a Gun charged, who hath not 100 *l. per Ann.* except in Time of War, or going to or from Muster, Forfeiture is 10 *l.*

Guns used by any one not having 40 *l. per Ann.* or 100 *l.* in Goods, to kill Deer or Conies, any Person having 100 *l.*

per Ann. may take them away, and keep them for his own Use. 3 Jac. cap. 13.

Any Person may bring an Offender against the Statute of 33 H. 8. before *next Justice*, who upon Examination and Proof may commit him to Prison till he hath paid the 10 l. (*viz.*) one Moiety to the Queen, the other to him who takes the Offender.

Shooting must not be near a Market-Town, but in Defence of his House or Person, or at a dead Mark, in Pain to forfeit 10 l. between Queen and Prosecutor.

Prosecution must be within six Months.

Shooting,
vide Fowl
in Ball.

Excepted out of this Statute:

1. Shooting at Butts by Servants whose Masters are qualified.
2. Inhabitants of Market-Towns.
3. Those who dwell alone, or near the Sea Coast.
4. Gun-Makers, and those who sell them.
5. Those who have Licences at Quarter-Sessions.

Shooting at Duck, Growse, Heron, Heathcock, Mallard, Pheasant, Partridge, Pidgeon, Teal, Wigeon, and being convicted before two Justices by Oath of two Witnesses, or by Confession, must be committed for three Months without Bail, or pay 20 s. for every Pidgeon killed, &c. to the Churchwardens where the Offence was committed, or where the Offender was taken, to the Use of the Poor. 1 Jac. cap. 27. 7 Jac. cap. 13.

The Form of a Conviction upon the Statute of 33 H. 8. before one Justice.

Suffex ff. **M**emorand. quod hoc quarto die Februarii instantis, Anno, &c. quidam T. P. de H. in Com. predict. Labourer, venit coram me R. B. Armig. proximo Justiciar. dicta Domina Regina ad Pacem suam in Com. predict. conservand. assign. & adunc & ibidem super Sacrum. suum dixit & deposuit quod J. O. nuper de H. predict. in Com. predict. Yeoman, pr. mo die Januarii, Anno Regni dicta Domina Regina nunc 13, apud H. predict. in Com. predict. habuit & custodivit quoddam torpentum (vocat. a Hand-Gun) & adunc & ibidem in tormento predict. cum pulvere bombardico & plumbeis pellet. (Anglice, Hail-Shot) onerat. illicite & injuste displodebat (Anglice, did shoot) contra formam Statuti in hujusmodi casu editi & provis. eodem J. O. adunc non habente in jure suo proprio, aut in jure uxoris suae ad usum ipsius J. O. nec alicui alia persona sive aliquibus aliis personis

Prosecution by a common Person within six Months, by the Queen within a Year. The Offender must be brought before the Justice instantly, upon View of the Offence.

sonis habend. vel habentibus ad usum ipsius J. O. terr. tenement. feoda annuat. seu Offic. ad annum valorem Centum librarum & quia prædict. J. O. existens attachiatus & conduct. (Anglice, brought) coram me præfat. proximo Justiciari. per dictum T. P. pro offens. prædict. & onerat cum dicto offens. in forma prædict. eandem offensionem non protest deducere. Ideo consideratum est per me præfat. prox. Justiciari. quod idem J. O. forisfaciat & solvat summam decem librarum juxta formam Statuti prædict. cujus quidem summa decem librarum medietas solvetur ad usum dictæ Domine Regine, & altera medietas inde solvetur præfat. T. P. existen. primo conveyator (Anglice, Bringer) dict. J. O. coram me pro offens. prædict. juxta formam Statuti præd. Et quod idem J. O. committatur ad Gaolam Com. prædict. ibidem remansur. quousq; solveret prædict. summam decem librarum ad usus prædict. juxta formam Statut. præd. Raym. 378. 1 Vent. 39, 419. Sid. 247. 1 Sand. 263.

An Indictment for keeping *diversa Tormenta* (Anglice, Guns) *carentia longitudine secundum formam Statuti*, not good. Roll. Abr. 2 Part 81.

It hath been a Question, Whether an Indictment will lie upon this Statute before Justices in Sessions, for want of Jurisdiction; because tho' they have Power by the general Words of their Commission to punish Offences against the Peace, yet this is not such an Offence, 'tis only a Defect in the Qualification of the Person shooting. 4 Mod. 49, 50.

Hares. Vid. Hares in Bail.

Hare-pipes. Vid. Dogs.

Offender convicted by his own Confession, or Oath of Two Witnesses before Two Justices, of killing a Hare, must pay to the Use of the Poor 20 s. where the Offence was committed, or where taken, or else must be committed without Bail for Three Months; but after he has been in Prison a Month, he shall be discharged, if he will be bound with Two Sureties before Two Justices never to offend in that Kind any more. 1 Jac. cap. 27.

Selling a Hare, forfeits 10 s. to the Prosecutor and Poor. *Idem.*

Tracing, killing or destroying them in Snow, forfeits 6 s. 8 d. for each Hare. This is inquirable in Sessions and Leets, and Forfeiture goes to the Queen, if assessed in Sessions. 14 & 15 H. 8. cap. 10.

If a Constable, searching by Vertue of a Warrant, find a Hare in the House of a suspected Person not qualified, he must carry him before a Justice; and if he doth not give a good Account how he came by it, or bring the Party of whom he bought it, or some Person to depose such Sale, he shall stand convicted, and pay not under 5 s. nor exceeding 20 s. to the Informer and Poor. 3 W.

Hawking.

Hawking in Eared-Corn, is prohibited by the Statute of 23 Eliz. cap. 10. except by the Owner's Consent; the Penalty is 40 s. to be recovered by the Owner in any Court of Record; and one Justice may bind the Offender with good Sureties to answer it at next General Sessions.

A Hawk taken up, must be delivered to the Sheriff if taken by a mean Man; and if not challenged in Four Months, the Sheriff having proclaimed the Hawk in the Towns of the County, may keep it.

Stealing of a Hawk, or concealing it after Proclamation made by the Sheriff, Felony: Clergy allowed. 37 Ed. 3. cap. 19.

Harvest-time.

Artificers, and Persons fit to labour, may in Harvest-time be compelled by one Justice or Constable, and upon Refusal may be put into the Stocks two Days and one Night; and the Constable and other Head-Officer is to do it, under Penalty of 40 s. 5 Eliz. cap. 4.

Hawkers and Pedlars.

By the Statute of 8 & 9 W. 'tis Enacted, That every Hawker, Pedlar, or Petty-Chapman, or other Trading Person, going from Town to Town, &c.

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|----------------------------|-----------|-----------|-----------|
| If on Foot, he must pay | 04 | 00 | 00 |
| If with Horse, Ass or Mule | 08 | 00 | 00 |

Such Hawkers must take a Licence, &c. and if he travels without, or contrary to his Licence, he forfeits for every Offence to the Informer and Poor of the Parish where discovered 12 l.

Refusing to shew his Licence, being demanded by any Officer of the Peace, he forfeits to the Poor where the Demand shall be made 5 l.

Continued
by 9 & 10
Will. to 24
Junii, 1701.
Continued
by 12 & 13
Will. to 24
Junii, 1706.

And for Non-payment of the same, must suffer as a Vagrant, and be sent to the House of Correction.

Travelling with forged Licences, forfeits to the Queen and Prosecutor, to be recovered in the Courts at *Westminster*, 50 *l.* and be subject to the Penalties for Forgery.

A Constable neglecting or refusing to assist in the Execution of this Act, being convicted on Oath before a Justice of the Peace, forfeits for every Offence to the Poor and Prosecutor, to be levied by Distress, &c. 2 *l.*

Any Person may seize and detain such Hawker till he produce a Licence, or if Trading without a Licence, till Notice be given to a Parish-Officer; who is to carry him before a Justice of the Peace, who upon Confession of the Party, or Oath of one Witness, That the Offender had traded without a Licence produced, shall by Warrant levy 12 *l.*

3 & 4
Annæ c. 4.

And because some Abuses were afterwards committed by Persons letting out to Hire the Licences by them taken to trade as Hawkers; therefore another Law was made, That every Person trading as an Hawker, &c. shall produce his Licence on Demand, or otherwise he shall incur the same Forfeiture as if he had traded without a Licence; and if any Person lend a Licence to Hire, either the Lender or the Trader shall forfeit 40 *l.* and the Lender shall forfeit the Licence, one Moiety of the 40 *l.* to the Queen, the other to the Informer, by Action of Debt, Bill, Plaint or Information, &c.

And in the same Act 'tis declared, That Traders in the Woollen and Linnen Manufactures, sending their Goods to Markets and Fairs on Horses, and selling the same by Wholesale, neither they, or those employed under them, shall be taken to be Hawkers.

The Officer must render the Overplus after Deduction for the Charge of Distraining, and out of the Sale of the Goods distrained, pay the Penalties and Forfeiture.

Persons excepted out of this Act:

| | |
|------------|-----------------------------------|
| | { Acts of Parliament. |
| | { Almanacks licensed. |
| | { Fairs, selling Goods therein. |
| | { Fish. |
| | { Fruit. |
| Sellers of | { Gazetts. |
| | { Markets, selling Goods therein. |
| | { Prayers, selling Forms thereof. |
| | { Prints licensed. |
| | { Proclamations. |
| | { Viscualls. |

Makers

Makers of { Any Goods or Wares in this Kingdom, and selling Goods of their own making: } Their { Agents. Apprentices. Children. Servants.

Artificers: { Coopers. Glaziers. Harness-makers. P ummers. Tinkers. } Or { Other Persons Trading in mending Kettles, Tubs, Household-goods or Hatness, from going about, and carrying with them proper Materials for mending the same.

Wages. See Dogs.

hedge-breaking. See Wood.

Breakers and Cutters of — { Fences. Hedges. Pales. Rails. } Any of these Offenders 43 Eliz.c.7. being convicted before one Justice, either upon Confession, or Oath of one Witness, must pay what Damage the Justice shall think fit; and if not able, may be whipped by the Constable, who neglecting, may be committed without Bail till it be done. The second Offence is Whipping.

Cutters and Carriers away of — { Corn growing. }

Pullers up of — { Fruit-Trees, with Intent to carry away. }

Cutters and Spoilers of — { Poles. Trees. Wood. }

No Justice shall proceed for any of these Trespasses done to himself, without the Assistance of another Justice.

| | | | | | | | |
|---|---|-------------|---|---------|---|----------------|--------------------|
| Constable, or any other Person, may take Persons who are suspected of having, &c. | { | Bark. | { | Pales. | { | Trees growing. | 15 Car. 2. cap. 2. |
| | | Broom. | | Poles. | | Under-wood. | |
| | | Furze. | | Posts. | | Wood. | |
| | | Gates. | | Rails. | | | |
| | | Hedge-wood. | | Stiles. | | | |

And by Warrant from one Justice, may search their Houses, and if they find any of these Things, may carry the Person before a Justice; and if such Person cannot satisfy the Justice how he came by them, &c. or doth not within a Time limited produce those of whom he bought them, or some Witness

Witness who will depose of whom bought, he shall be deemed as convicted upon the Statute of 43 *Eliz.* aforesaid, and be subject to the Punishment therein contained; and besides, for the first Offence;

- (1.) He shall make such Recompence, and within such Time as the Justice shall appoint: And likewise,
- (2.) He shall pay to the Overseers of the Poor where the Offence was done, not exceeding 10*s.*
- (3.) In Default thereof, he must be sent to the House of Correction for any Time not exceeding a Month.
- (4.) Or be whipped.

Second Offence, must be sent to the House of Correction for a Month, and be there kept to hard Labour.

Third Offence, shall be deemed incorrigible Rogues.

* W.2.c.49.
Cro. Car.
280, 439.
Sid. 107,
212.
Stiles 215.
1 Leon. 108.
Raim. 487.

Besides these Statutes, there is a very ancient * Law, by which 'tis enacted, That if Hedges are destroyed *notanter*, and it cannot be known by the Verdict of a Jury who were the Malefactors, that the Towns near adjoining shall be distreined to satisfy the Damages; and there have been Writs framed upon this Law, and Prosecutions thereon.

But cutting down Timber-Trees *notanter* is not within this Statute, because the Words are against those who *fossam & sepem prostraverunt*.

A Warrant against a Hedge-breaker.

To the Constable, &c.

Suffex ss. **W**Hereas it hath been duly proved before me R. B. Esquire, one of Her Majesty's Justices of the Peace for the County aforesaid, That T. P. of, &c. hath within six Weeks last past broke the Hedges of, &c. (or as the Case is) contrary to the Laws in that Case made and provided: I do therefore hereby appoint the said T. P. within five Days after Notice hereof, to pay unto the said S. J. 9*s.* in Recompence and Satisfaction for the Wrong so done, as aforesaid; and if the said T. P. shall not pay the same, that then you inform me thereof, that such farther Proceedings may be had against him for the said Offence as the Law requireth. And hereof fail not. Given, &c.

* If the Justice doth not think him able, he may order him to be whipped. Liked Punishment for an Accessary.

Upon

Upon Non-payment, to be whipped.

To the Constable, &c.

Suffes ff. **W** Hereas it hath been duly proved before me, R. B. Esq; being a Justice of Peace for the County aforesaid, That, &c. (as in the former War-rant) And whereas the said T. P. hath not paid or discharged the said J. S. for the Damages done to him, the Sum of 9 s. by me appointed for him to pay: Therefore I do hereby order, That the said T. P. be forthwith committed to the said Constable of, &c. to be whipped; which you the said Con- stable are hereby required to do, or cause to be done, at your Peril. Given under my Hand, &c.

If any Justice find, upon Examination upon Oath, that any one hath bought stolen Wood, he may order such a Buyer to pay the treble Value to him from whom 'twas taken, and in Default of present Payment, may levy the same by Distress, and in Default thereof, may be committed for a Month.

Hemp, See Woolf, and working therein.

High-ways.

P Rivate Ways are to be repaired by the Village, and some times by a particular Person; but Publick Ways by the Parish, unless a particular Person was obliged by Custom or Prescription; and Clergy-men are liable to all Charges imposed by Act of Parliament, and in particular to repair High-ways. 1 Vent. 273.

The Statutes which relate to High-ways in general; are Four;

Viz. $\left\{ \begin{array}{l} 2 \text{ \& } 3 \text{ Phil. \& Mar. cap. 8.} \\ 5 \text{ Eliz. cap. 13.} \\ 18 \text{ Eliz. cap. 10.} \\ 22 \text{ Car. 2. cap. } \end{array} \right.$

But now by the late Statute of 3 & 4 W. & M. cap. 12. those former Laws are altered in many Particulars; upon which Statute these Things are to be considered, viz.

* On the 16th Day of December every Year, unless that happen on a Sunday, and then they must be chosen the Day following, after this Manner;

1. Out-
beports,
when to
be chosen,
&c.

High-ways.

Viz. The Parishioners being met, are to make a List of a competent number of Names of Men thus qualified :

1. They must have an Estate of 10 *l. per Ann.* either in their own Right, or in the Right of their Wives.
2. Or they must be worth 100 *l.* in Personal Estate.
3. Or rent 30 *l. per Annum.*

If there are not any such Persons in the Parish, then a List must be made of the most sufficient Persons.

The List must be returned to two or more Justices of the Peace near the Division in which the Parish lieth, at a Special Sessions to be held on the third Day of *January*, or within 15 Days afterwards.

The Constables neglecting to return such List, do each of them forfeit 20 *s.*

Out of this List so returned, the Justices at that Sessions do appoint one or more to be Surveyors, &c. by an Order under their Hands and Seals.

The Person thus appointed, must within 6 Days afterwards have Notice thereof given unto him by the Constable, leaving a Copy of the Justice's Order at the House of the Party, and then he must take upon him the Office.

But if he refuse, being so nominated and appointed, and served with the Order, then he forfeits 5 *l.* to be levied by Warrant from Justices of the same Division, or in Default thereof, from the Neighbouring Justices upon Oath made, &c.

The Forfeiture being levied, one Moiety is to go to the Informer, and the other to repair the High-ways ; and the Justices may appoint one or more Surveyors again, who upon Notice, must take upon him or them the Office, &c. under the same Penalty.

His Duty
when cho-
sen.

He must, within 14 Days after the Acceptance of his Office, and so from Time to Time every four Months, view the Roads and Bridges, &c.

He must present upon Oath before some Justice, &c. such Ways which are not in Repair, or he forfeits 5 *l.* unless two Justices shall allow his Excuse.

He must give publick Notice from Time to Time every four Months what Defaults he finds ; this Notice must be given in the Parish-Church the next *Sunday* after Sermon ended, and if not amended within 30 Days afterwards by those who ought to Repair, &c. then the Surveyor must within other 30 Days next following amend the same.

He must give an Account upon Oath at a Special Sessions, of all Money that comes to his Hands, and how dispos'd, &c.
and

and if any remains, he must deliver it to the next Surveyor, or forfeits double the Value of what the Justices shall judge in his Hands; to be levied by Warrant of two Justices, one Part to the Informer, &c.

If he neglects his Duty in any Thing, he is to forfeit 40 s. one Moiety to the Informer, the other to amend the High-ways; and this Forfeiture may be levied by a Warrant from two Justices.

He is to appoint 6 Days for providing Materials to amend the Ways, giving Notice of the several Days by him appointed; at which Time all Persons liable must work, and the Ways must be amended before the Feast of St. Luke.

Every Man keeping a Horse-Team must send out a Cart and two able Men; and if he keeps * Oxen, then he must send them out, and a Wain with two Men, every Day so appointed by the Surveyor; and if he keeps both, then he must send that which will do best Service, or forfeits 10 s. for every Day wherein he makes Default.

If all the Carriages in the Parish shall not be thought necessary by the Surveyors, then the Person whose Carriage is spared must send out two able Men, or forfeits 10 s. for every Man not sent.

Every Householder, Cottager and Labourer, must either work themselves, or hire one to work each of these 6 Days, or forfeits 12 d. per Day; and all of them must work eight Hours every Day.

If any Man hath a † Plow-Land or Pasture in several Parishes, he shall be chargeable only in the Parish where he lives; but if he keeps in his Occupation several Plow-Lands or Pastures, &c. in several Parishes, he shall be chargeable in every Parish.

In such Place where Carts are not used, the Inhabitants must send Horses, according to the Custom of the Place, with able Persons, &c. under the like Penalty.

A Parson is not chargeable for his Glebe; but if they use other Land, 'tis otherwise.

The Surveyor may complain to the next Justice, &c. who upon Oath made of the Default, may send his Warrant to levy the Forfeitures by Distress and Sale of Goods. *Viz.*

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|------------------------------|-----------|-----------|-----------|
| On a Labourer neglecting | 0 | 1 | 6 |
| For every Man and Horse, &c. | 0 | 3 | 0 |
| For every Cart with two Men | 0 | 10 | 0 |

for every Day they shall neglect; which Penalties, when levied, must be employed towards the amending of the Ways.

Y 2

These

Concerning working in the Ways, and who are chargeable.

* As many Draughts as he keeps, so many he must send out.
Per Stat. 22. Car. 2. cap. 12. 'tis 1 s. 6 d.

† Formerly 100 Acres, but now 80 Acres.
Per 7 & 8 Will. 50 l. per Ann. is a Plow-land.

How the Penalties are to be levied.

Bushes
in High-
ways.

These must be cut down by the Owners of the Soil within 10 Days after Notice given by the Surveyors, on Pain of 5 s. to be levied for every Neglect on the Goods of the Offender by Distress, &c. on Warrant of two Justices of the same Division, or in Default thereof by any Neighbouring Justices; but there must be Oath made by one Witness; one Moiety of the Forfeiture is to the Informer, the other towards repairing of the Ways. 3 & 4 W. & M. cap. 12.

No Bushes, Trees or Shrubs, shall grow or stand, or Bough or Branch over-hang a High-way not 20 Foot broad. Offender forfeits 5 s. to be levied and employed as aforesaid.

How
broad
High-
ways
must be.

A Surveyor may make every Cart-way leading to a Market-Town eight Foot broad at least, and as near as he can level; but the Statute appointing no particular Penalty against a Surveyor offending this Branch of the Statute, it may fall under the General Clause of neglecting his Duty in any Thing required by the Act, and then the Penalty will be 40 s. For making the Ways broad, is a Thing required by this Law, though there is no Provision how, or after what manner, (*viz.*) by laying part of the adjoining Lands to it where the Ways are narrow, which cannot be done without the Consent of the Owners. 3 & 4 W. & M. cap. 12.

Caufways for Horses must be three Foot broad.

Materials
for a-
mending
the Ways.

These are Stones, Gravel, Sand, &c.

The Surveyors, &c. may take Stones and Rubbish already dug out of any Quarry, without Leave of the Owner, but cannot dig without Leave; yet they may gather Stones in any Land, without being Trespassers.

For Gravel they may dig in any Ground near the High-way, but not in an House, Garden, Orchard or Meadow, and it must be but in one Pit or Hole not above 10 Foot in Length and Breadth; which Hole must be filled with Earth at the Charge of the Parish within a Month afterwards, under Penalty of five Marks, to be recovered by Action of Debt.

7 & 8 Will.

Those who pull up, cut or remove, any Post, Block, Great Stone, Bank of Earth, or other Security of a Horse-way or Caufway from Waggon, Carts, &c. forfeits for every Offence 20 s.

The Conviction is to be by Oath of one Witness, before one Justice of the Division, or upon his own View, and 'tis to be levied by his Warrant by Distress and Sale, &c. one Moiety to the Surveyors to repair the Ways, the other to the Informer.

When

When they have laid out their own Money to buy Materials, as Sand, Gravel, &c. in Parishes where they have none, they must attend the Justices at a Special Sessions, and make Oath what Money they have expended, &c. and then two Justices at the Sessions may make a Rate upon every Inhabitant, Parson, Vicar, and other Occupier of Lands, Tythes, Woods, &c. in the Parish; which Rate being allowed by the said Justices in their Special Sessions, may be levied on Persons refusing to pay, by Distress, &c. 3 & 4 W. & M.

Of Rates
to restrain
burse
Surveys
ors.

By the Statute of 5 Eliz. those who have Lands adjoining to the High-way, in which Ditches ought to be, must scour them as often as there is Occasion, and lay Trunks or Bridges where there are Cart-ways into any Ground, that the Water may have a free Passage, upon Pain to forfeit 12 *d.* per Rod; but by the Statute of 3 & 4 W. & M. if they neglect 10 Days after Notice, the Forfeiture is 5 *s.* which is to be levied by Warrant of two Justices of the same Division, &c. upon Oath made, &c. one Moiety to the Informer, the other to amend the Ways.

Of An-
nopances
in the
High-
ways by
Ditches,
&c.

If in scouring the Ditches they lay the Soil in the High-way, and suffer it to lay there 6 Months, they forfeit 12 *d.* per Load; but by the Statute of 3 & 4 W. & M. if not carried away within 10 Days after Notice, to be levied and employed as aforesaid.

The Surveyors have Power to turn any Spring or Water-Course out of the High-ways into those Ditches; and where the Ditches already made are not sufficient to carry away the Water, they have Power by 3 & 4 W. & M. to make new Ditches and Drains in and through the Lands adjoining, which they must keep scour'd; and for that Purpose, may with Workmen come upon the said Lands, without being Trespassers.

Persons laying any Thing in the High-way not 20 Foot broad, forfeits 5 *s.* to be levied and employed as aforesaid; and if Timber, Stone, Hay, Straw or Scrubbe, or other Matter for making Dung or any other Pretence, shall be laid in any High-way, those who possess Lands next adjoining may remove and dispose thereof to their own Use.

Cannot lay Logs or Timber in the High-way, tho' there is a sufficient Room for Travellers left.

All Matters concerning the High-ways, must be determined in the County where they lie, and not elsewhere; and none shall be punish'd, unless prosecuted within 6 Months after the Offence is committed. The Party grieved may appeal from any Act done by the Justices to the Quarter-Sessions, whose Order shall conclude all Parties; and no Presentment, Indict-

Of Pro-
secution
upon the
Statute
3 & 4 Will.
& Mar.
Appeal,

Certiorari. ment or Order, shall be removed by *Certiorari*. If any Action should be commenced against those who put that Act in Execution, they may plead the General Issue, and give the Act it self and the Special Matter in Evidence; and if the Plaintiff be nonsuited, discontinue, or a Verdict against him, the Defendant shall have double Costs.

The Power of the Justices, &c. and what they are enjoined to do by that Act.

The Justices of the Division are to hold a Special Sessions in the Division, &c. every Year on the Third of January, or within 15 Days after, of which they are to give Notice 10 Days before they hold the same to every Constable within the Division.

They are to nominate under their Hands and Seals, out of the Lists brought unto them, one or more Surveyors of every Parish within the Division, for the Year ensuing; and upon the Refusal of the Party so nominated, and paying the Forfeiture of 5 *l.* for which they are to make a Warrant upon Oath of one credible Witness, then they are to nominate some other fit Person.

Two of them may allow a reasonable Excuse of a Surveyor not viewing, or not presenting, every four Months in what Condition the Ways are.

If Notice is given on *Sunday* after Sermon next after any Default found; if within thirty Days after such Notice the Party who ought to amend it doth neglect so to do, and if the Surveyor within thirty Days afterwards doth amend it, and the Party neglecting refuseth to pay the Charges, then upon Oath made of Notice, &c. as aforesaid, the Party shall be repaid such Charges as the Justice shall think fit, which is to be levied by his Warrant, &c.

They are once in four Months to hold a Special Sessions, and summon the Surveyors thereunto, and to tell them what they are obliged to do.

If any Fine or Forfeiture imposed on any Parish be levied upon a particular Inhabitant, then upon Complaint thereof to the Justices at the Special Sessions, they or two of them may, by their Warrant, cause a Rate to be made to repay that Person, or Persons; which Rate the Surveyors shall levy and pay within a Month after the making thereof.

The Justices in their Quarter-Sessions not being satisfied that the Ways can be amended without the Help of the Act of 3 & 4 *W. & M.* may cause Assessments to be made on every Person usually Rateable to the Poor, not exceeding 6 *d.* in the Pound for the Yearly Value of the Lands, nor of 6 *d.* for every 20 *l.* Personal Estate: These Assessments must be made and levied by such Persons, and in such manner as the Justices in their Sessions shall direct and appoint, and the Money must be employed according to their Order for repairing of the High-

High-ways: and if not paid within 10 Days after Demand, may be levied by Distress.

Any Person grieved by such Assessment may appeal to the Quarter-Sessions, whose Order shall be final.

The Justices of *Middlesex* may at their Quarter-Sessions make Rates for Paving *Kensington*, &c.

The Justices of every County, at *Easter Sessions*, shall assess the Prices of all Land-Carriages of Goods to be brought into any Place within their Jurisdiction by any common Carrier, and shall certify such Rates to the Mayors or chief Officers of every Market-Town.

The Justice neglecting or refusing to do what is required by the A&T, forfeits $\frac{1}{2}$ one Moiety to the Prosecutor, to be recover'd by Action of Debt in any of the Queen's Courts of Record; the other Moiety to be employ'd to amend the High-ways where the Prosecutor liveth.

By 2 & 3 *Phil. & Mar.* & 5 *Eliz. cap. 13.* any Justice may, upon his own Knowledge, present at the General Sessions any Offence concerning High-ways; upon which the Court may assess a Fine, though the Offender is absent; which Fine shall not be taken off, unless the Party presented do certify the Amendment of the Ways.

The Authority of the Justices by other Acts. 2 Sand. 160.

The Form of which Conviction, is as followeth:

Suffex ff. **M**emorandum quod R. B. de, &c. in Justiciar. Dom. Regis ad Pacem in Com. præd. conservand. nec non ad diversas felonias & transgressiones, & alia malefacta in eodem Comitatu perpetrat. audiendum & terminand. assign. ad hanc Generalem Sessionem Pacis Com. præd. tent. apud Lewes infra Com. præd. 22 die Octobris, Anno Regni, &c. coram W. N. &c. Justiciariis Pacis in Com. præd. virtute Statut. Dom. Elizabethæ, nuper Regina Angliæ, in Parlamento, tent. apud Westmon. 12 die Januarii, Anno Regni sui, Quinto, & secundum formam & effectum dicti Statuti, [intitulat. An A&T for the Reviving of a Statute made Anno 2 & 3 *Phil. & Mar.* for the Mending of High-ways,] super propriam notitiam suam presentavit, quod quadam Communis & antiqua Regia Via infra Parochiam de H. in Com. præd. qua ducit de Parochia præd. ad Villam de L. in Com. præd. (Muratoria Villa existit.) a quodam loco vocat. &c. in Parochia de H. præd. usque quendam locum, &c. in Parochia de H. præd. non est bene & sufficienter reparata & emendata secundum formam & effectum Statut. præd. sed modo est in magno decasu, ita quod subditi dicti Dom. Regis per viam præd. cum Equis, Plaustris, Carrucis, & Carriageis, & alijs necessariis suis, prout solebant, & debent, absque magno periculo transire seu laborare non possunt. In cuius rei Testimonium præd. R. B. manum & sigillum suum apposuit.

The Order made thereon, is as followeth :

Super quo ad eandem Generalem Sessionem Pacis ibidem tent. die & Anno supradictis, præd' Justiciarii Dom. Reg. ad pacem dictæ Dom. Reg. in Com. præd. conservand. assign. assessaverunt & imposuerunt finem 20 l. levand' de Inhabitantibus dict. Parochiæ de H. in quorum defectu via præd' non est sufficienter reparata secundum formam Statut. præd' si præd' Via non est sufficienter reparata & emendata ante festum Sancti Johannis Baptistæ prox. futur.

'Tis to be observ'd, That upon such a Conviction the Decay of the High-way cannot be traversed; but the Defendant may plead, that some other Person ought to repair, and traverse that he ought not.

Any Officer receiving Estreats for levying Forfeitures, &c. and neglecting or not accounting and paying it between the first Day of March and the last Day of April, to the Constables, &c. Every Justice knowing any of these Defaults, may present it.

Two Justices (*Quorum unus*) may take the Accompt of a High-Constable, and may compell him to pay the Fines levied to the Petty-Constable, or commit him; but he must be allowed 8 d. per Pound for Gathering, and 12 d. for the Fee of the Estreat.

Any one Justice, upon Complaint, may compell those who have been Constables to pay the Arrears of Money by them levied on Estreats.

Charities for Repairing Ways are under the Government of Justices, &c. in their Sessions, if Trustees of such Charities are faulty in not letting the Lands at the improved Rents, or taking Fines.

One Justice of Peace, upon his own View, or upon Conviction by the Oath of one Witness, may commit him who resists any Person employ'd to put the Acts concerning High-ways in Execution, or of rescuing Goods distrained, until he pay Forty Shillings to the Surveyor, if he refuse to pay the same within seven Days after Notice of such Conviction.

22 Car. 2. cap. 12.

By this Act, Carriages with Burdens are not to be drawn with above five Horses at length, but if they draw with more, it must be in Pairs. Offenders forfeit 40 s. for every Offence; one Third to the Surveyor, another Third to the Poor, another the Informer.

7. & 8 Will.

But by a late Act, 'tis enacted, That no Travelling Wagon, Cart or Carriage, whereon Burdens shall be drawn for Hire (except about Husbandry, Manuring of Lands, carrying Hay, Straw, Corn unthresh'd, Coal, Chalk, Timber, Materials for Building, Stones, or Artillery) shall go in any High-

High-way, or be drawn with above the Number of Horses and Oxen following.

If with Horses, then not above Eight, which must draw in Pairs, as hereafter mention'd.

If with Horses and Oxen, it must be thus : *Viz.*

- { Eight Oxen and one Horse.
- { Six Oxen and two Horses.
- { Two Oxen and six Horses.
- { Four Oxen and four Horses.

Which Horses and Oxen must draw in Pairs, with a Pole between the Wheel-Horses, or in double Shafts, and the other Horses to draw in a Line with the Wheel-Horses or Oxen, as they usually draw in Coaches.

The Owner of the Waggon, Cart, Horse or Oxen, forfeits for every Offence 40 s. whereof Two Thirds go to repair the High-ways, and the other Third to the Informer, to be * levied by Distress of any one of the Horses or Oxen, by the Constable, Headborough, Surveyor of the High-ways, by Warrant from one Justice; the Conviction must be by Oath of one Witness, or View of the Justice.

* 22 Car. 2.
cap. 12. as
by that Act.

If the Penalty is not paid within three Days, the Officer may sell it, restoring the Overplus, the Charges of the Distreining, Selling and Keeping, being first deducted.

But this Part of that Act being found to be impracticable in some Places of this Kingdom; therefore by another * Statute, the Drawing in Pairs with a Pole between the Wheel-Horses, or in double Shafts, &c. was repealed.

* 6 Annæ.

And by the said Act 'tis farther provided, That after the 24th of June, 1708. no Travelling-Waggon or Cart, wherein any Burden shall be carried (except as in the former Act is excepted) shall be drawn with more than Six Horses, Oxen, or Beasts, upon Pain that the Owner of such Waggon shall forfeit for every such Offence 5 l. one Moiety to the Surveyor of the High-ways of the Place where the Offence was committed, to be employ'd in the Repairs thereof; the other Moiety to the Discoverer or Prosecutor, so as such Discoverer be an Inhabitant of such Place.

This Penalty is to be levied by Distress of the Horses or Oxen of the Owner of the Waggon, by vertue of a Warrant under the Hand and Seal of one Justice of Peace; and if not paid within three Days after the Distress taken, the Person distreining may sell the same, rendering the Overplus, and deducting the Charges.

Any Surveyor wilfully suffering any Waggon to be drawn with more than six Horses, and neglecting to put this or any former Laws in Execution for Repairing High-ways, forfeits 5 l. to be divided and recovered as aforesaid.

But

High-ways.

But a Carrier may draw with as many Horses as the Sessions shall direct, up any Hills, without incurring any Forfeitures; which Order or Direction must be carefully kept amongst the Records of the Sessions, to which any Person may have Recourse without Fee.

A Warrant to levy the Five Pounds.

To the Constable, &c.

Suffex ss. **W**Hereas it hath been duly proved before me, R. B. Esq; one of Her Majesty's Justices of the Peace for the said County, by T. K. an Inhabitant of the Parish of H. in the said County, That W. W. of L. in the County aforesaid, Carrier, did on the 5th Day of August last travel with one Waggon not employ'd about Husbandry and Manuring of Land, nor in carrying Straw, Hay, Corn, Coal, Chalk, Timber for Shipping, Materials for Building, nor any Stones, or Ammunition or Artillery for the Service of Her Majesty, but loaded with Goods, and drawn in the common High-way in the said Parish with seven Horses, contrary to the Law in that Case made and provided; by Reason whereof, the said W. W. being Owner of the said Waggon, hath forfeited the Sum of 5 l. These are therefore to require you forthwith to levy the said Sum by Distress and Sale of the Horses of the said W. W. rendering to him the Overplus, after the Charges of Distreining shall be deducted; and that you pay one Moiety thereof to T. R. who is Surveyor of the High-ways of the said Parish of H. where the said Offence was committed, and the other Moiety to the said T. K. who hath discovered and prosecuted the said W. W. for the said Offence. And hereof fail nor. Given under my Hand and Seal, &c.

A Warrant against a Surveyor, for not putting the Laws in Execution.

To the Constable of, &c.

Suffex ss. **W**Hereas it hath been duly proved before me, R. B. Esq; &c. That T. R. Surveyor of the High-ways of the Parish of H. in the said County, did on the 5th Day of August last wilfully suffer a Waggon loaded with Wares, and not employ'd in and about Husbandry, (*ut prius*) to be drawn in the common High-way, in the said Parish of H. with seven Horses, and hath hitherto neglected

lected to put the Laws in Execution made for Repairing the High-ways; by Reason whereof he hath forfeited 5 l. These are therefore, (*ut prius.*)

Statutes
which con-
cern High-
ways and
Bridges,
in par-
ticular
Places.

| | | |
|---------------|----|--|
| Bedford. — | 5 | Anna. |
| Cambridge. { | 35 | H. 8. cap. 15. |
| | 15 | Car. 2. cap. |
| | 4 | & 5 W. & M. cap. 9. |
| Cardiffe. — | 23 | Eliz. cap. 11. |
| Carleon. — | 23 | Eliz. cap. 11. |
| Chepstow. { | 39 | Eliz. cap. 23. |
| | 3 | Jac. 1. cap. 23. |
| Chester. { | 37 | H. 8. cap. 3. |
| | 4 | & 5 Anna. |
| Chichester. — | 18 | Eliz. cap. 19. |
| Cumberland. — | 43 | Eliz. cap. 16. |
| Dorset. — | 1 | Mar. cap. 5. |
| Essex. { | 7 | & 8 W. cap. 9. |
| | 1 | Anna. |
| Gloucester. — | 9 | & 10 Will. |
| Hereford. { | 39 | Eliz. cap. 24. |
| | 15 | Car. 2. cap. 1. |
| Hertford. { | 16 | & 17 Car. 2. cap. 10. |
| | 4 | & 5 W. & M. cap. 9. |
| | 4 | & 5 W. & M. cap. 9. |
| Huntington. — | 4 | & 5 W. & M. cap. 9. |
| Ipswich. { | 13 | Eliz. cap. 24. |
| | 15 | H. 8. cap. 5. |
| | 26 | H. 8. cap. 7. |
| | 18 | Eliz. cap. 10. |
| | 27 | Eliz. cap. 26. |
| | 39 | Eliz. cap. 19. |
| | 24 | H. 8. cap. 11. |
| Kent. { | 25 | H. 8. cap. 8. |
| | 32 | H. 8. cap. 17. |
| | 34 | H. 8. cap. 12. |
| | 13 | Eliz. cap. 23. |
| | 23 | Eliz. cap. 12. |
| | 19 | Car. 2. cap. 3. |
| | 22 | & 23 Car. 2. cap. 17. |
| | 3 | & 4 W. & M. cap. 12. |
| | 23 | Eliz. cap. 11. |
| | 39 | Eliz. cap. 23. |
| Neport. { | 27 | Eliz. cap. 24. |
| | 7 | & 8 W. cap. 26. between Wymondham and
Aisleborough. |
| Oxford. — | 18 | Eliz. cap. 20. |
| Rochester. { | 18 | Eliz. cap. 17. |
| | 27 | Eliz. cap. 15. |
| Bridge. — | 1 | Mar. cap. 5. |
| Somerset. — | | |

Surrey.

Surrey. — 39 Eliz. cap. 19.
 15 H. 8. cap. 6.
 Suffex. — } 26 H. 8. cap. 7.
 39 Eliz. cap. 19.
 Wilts. — 5 Anna.

Concerning Indictments about High-ways.

For not
repairing.

UPon Not Guilty pleaded, the Decay only comes in Question; for if another Person ought to repair, it must be pleaded. *Pasch. 26 Car. 2. per Hales.*

Non reparare debet, is a bad Issue; but yet if found for the Defendant, and not who ought to repair, he shall be acquitted, though no Judgment can be given upon such a Verdict, *Sid. 140.*

Stiles 400.

A Prescription to repair *ratione tenuræ*, is not good; because it ought to be by Custom, which is Local, (*viz.*) that in such a Place there has been a Custom, Time out of Mind, &c. to repair. *Sid. 464.*

Latch. 206.

One was indicted for not repairing, which he ought to do *ratione tenuræ*, omitting the Word *sua*; and it was objected, That another might have the Lands, and therefore it was unreasonable to indict the Defendant; and this seemed to be a colourable Objection, but the Forms are both Ways, and in the latter Indictments that Word is usually left out.

1 Vent. 331.

Where a Person by any Enclosure streightens a High-way on both Sides, tho' the Parish repaired it before, yet now he is obliged to maintain it at his own Charge; but if he abates the Enclosure, and leaves the Way open as it was before, then the Parish is to repair it again. *Gro. Car. 366. Sand. 160.*

If Lands are exempted from repairing, &c. by a Grant of the King, made before the Statute of 2 & 3 Phil. & Mar. yet that shall not be a good Discharge upon the Land. *3 Mod. 96.*

A High-way is that which leads from one Market-Town to another, and is to be repaired of common Right by the Parish where the Decay is, unless some other Person is bound by Prescription or Custom; and therefore *reparare debet* generally, without shewing how, is not good.

S.d. 140.

But if the Defendant pleads *Reparare non debet*, and 'tis so found, he shall be acquitted, though it doth not appear who should repair; and the Reason may be, because *de communi jure* the Parish is bound to repair their own High-ways, and therefore they are never allowed to plead Not Guilty, and give in Evidence that another ought to repair by Prescription or Tenure, for if they would discharge themselves, they must plead it.

1 Vent. 256.

A Common Way is that which leads from a Village or Town to the Parish-Church, or Fields; 'tis also called, a Private Way, and is to be repaired by the Village or Hamlet, and sometimes by a private Persons: If such a Way be out of Repair, every Inhabitant may have an Action, but an Indictment will not lie. 1 Vent. 208.

But a Hamlet within a Parish cannot be charged generally to repair without Prescription, &c. Stiles 163.

All Nufances must be set forth to be in a High-way, for if 'tis alledged to be in a Horse-way, the Indictment will be quash'd; and tho' a Nufance may be alledged *in via Regia*, yet 'tis not good if the Indictment doth not express *where*, or in what County.

It must conclude, *ad commune nocumentum, ligeorum, &c.* if 'tis restrained by the Words, *Prope inhabitantium*, it will be quash'd. 1 Roll. Rep. 406. 1 Vent. 26.

On an Indictment, the Defendant must produce a Certificate, that the Nufance is removed, before he can take Exceptions to it; but a Presentment in such a Case may be quash'd, without a Certificate, &c.

For putting a Laystall next a High-way, not good, without shewing from and to what Place the Way leadeth. Roll. Abr. 2 Pars 81.

If 'tis a High-way, there is no Necessity of setting forth the *terminus a quo & ad quem*, because such Way leads from the Sea through the whole Kingdom; but if it is only a Common Way, 'tis otherwise.

Is was the Opinion of my Lord Hales, That every Inhabitant of the Parish may have an Action upon the Cafe, for stopping the Way to the Church.

For Stopping *quandam partem aqua*, it was quash'd, for it should have been *terram aqua coopertam*. A Man was indicted for stopping *communem viam pedestrem ad Ecclesiam de H.* and it was held, if the Way had been alledged to be *pro Parochiano*, it had made the Indictment ill, for then the Nufance would extend no farther than the Parish, and every Parishioner might have an Action; but it was laid *ad commune nocumentum*, and in such Cafe, the Church shall be only intended the *Terminus ad quem*.

'Tis not always necessary to alledge, that the Defendant stopped *communem Viam*, for it may be a Way leading to a Church.

The Defendant pleaded, That he laid out a more Commodious Way, and that before it was done he brought a Writ *ad quod damnum, &c. viz.* Whether it would be a Damage if the King should give a Licence to stop up the old Way, and upon

Cro. Eliza
63.
1 Bulst. 205.

for a Nufance.

for stopping a
Wap.
2 Sand. 157.
Larch. 183.

2 Cro. 314.

1 Vent. 208.

Poph. 206.

upon the Inquisition taken, it was found that 'twas no Damage: This was held no good Plea, because he did not plead that he had obtain'd the King's Licence; neither did he set forth by what Authority he laid out the Way, for 'tis but at his Pleasure, and he might stop it when he will. *Cro. Car.* 266.

If the Defendant before Verdict brings a Certificate that the Way is repaired, then he may submit to a Fine; but after a Verdict, such Certificate will not do, because the Conviction being upon Record, must be answer'd by Matter of as high a Nature, and that must be by a *Constat* to the Sheriff, who may return that 'tis amended. *Raym.* 215.

For stopping *quandam partem Regie Vie* apud H. not good, without alledging how much in Breadth and Length. *Roll. Abr.* 2 Pars 81. but you must not say, *Per estimationem*, for that is incertain.

A Presentment in a Leet for diverting a Way, is void; because the Word (Divert) is not a Term proper and applicable to a Way, which may be *obstructed*, but cannot be *diverted*.

4 Leon. 121.

For stopping a Way *valde necessariam* for the Subjects, quashed, because it did not alledge it to be *Regiam Viam*.

Cro. Eliz.
143.

So for alledging it to be *ad necessitatem diversorum*, &c. it should be *ad* the People.

1 Vent. 4.

The Information was for stopping, and the Evidence was that he plowed it, and held good.

For not
working
on the
High-
ways.

In this Indictment, Notice was alledged *die Dominica post Festum*, &c. and did not say, *proxima*, which ought to be by the Statute of 1 & 3 Phil. & Mar. and for that Reason it was quash'd. *Pasch.* 20 Car. 2.

2 Roll. Rep.
412.

If a Man hath Eight Plow-Lands, tho' 'tis all Pasture, he ought to find Eight Teams for six Days. *Raym.* 186.

In this Case, the Statute charges the Occupier: The Indictment was, That the Defendant *habens tantam terram*, did not work: And it was objected, That the Defendant might have Lands, and not use them himself; and this was held material.

A Warrant to levy the Five Pounds for not taking upon him the Office of Surveyor.

Two Justices.

Suffex ss. Whereas it appeareth unto us, &c. That J. O. of H. in the said County, was on the Fifteenth Day of January last past lawfully nominated and appointed to be Surveyor of the High-ways, in and for the said Parish, for the Year next ensuing; and that within six Days after the said Nomination and Appointment, he had due Notice thereof: And whereas T. P. of H. aforesaid, hath now made Oath before us, That the said J. O. hath refused to take upon him the said Office, by

• Or Neglected.

Reason

Reason whereof he hath forfeited the Sum of Five Pounds, one Moiety thereof to the said T. P. who hath informed us of the said Offence, and the other Moiety to go towards the Repairing the said High-ways: These are therefore to command you, that you forthwith levy the said Forfeiture of Five Pounds by Distress and Sale of the Goods of the said J. O. rendering to him the Overplus, if any such shall happen to be, the necessary Charges of Distreining being first deducted: And hereof fail not. Given under our Hands and Seals the 20th Day of January, &c.

A Warrant against Constables, Tything-men, &c. for not returning Lists of Names to Justices.

To the High-Constable of the Rape of L. in the County of S.

Suffex ss. **V** Hereas the Constables, Headboroughs, Tything-men, Church-wardens and Surveyors of the High-ways of and in the Parish of H. in the County aforesaid, have neglected to make a List of the Names of a competent Number of Inhabitants of the said Parish, qualified by Law to take upon them the Office of Surveyor or Surveyors of the High-ways in the said Parish for this present Year, or to return any such List to two or more Justices of the Peace at a Special Sessions by them held for that Purpose on, &c. according to the Form of the Statute in that Case made and provided, by Reason whereof every one of them so neglecting hath forfeited * Twenty Shillings, one Moiety thereof to the Informer, the other to go towards the Repairing the said High-ways: These are therefore to command you, that forthwith you levy the several Sums of Twenty Shillings upon, &c. (as before.)

Two Justices. One Witness upon Oath.

* Moiety to the Informer, the other to amend the Ways.

A Warrant against a Surveyor neglecting to view the Ways, and not present to a Justice in what Condition they are in.

To the Constable, &c.

Suffex ss. **V** Hereas it appeareth unto us, H. P. and R. B. Esquires, two of Her Majesty's, &c. That J. O. of, &c. being lawfully nominated and appointed Surveyor of the High-ways in the Parish of, &c. for this present Year, hath neglected within * Fourteen Days after his Acceptance of the said Office, to view the Ways, Water-courses, Bridges and Causeways, which are to be repaired by the Parish

Two Justices.

* Or from Time to Time every 4 Months, as the Case is.

* Moiety to the Informer, the other to amend the Ways.

Parish of H. aforesaid, where he is Surveyor, and to present upon Oath to some Justice of the Peace in what Condition he found them, having for such his Neglect no reasonable Excuse allowed by Two Justices of the Peace; so that he hath forfeited the Sum of * Five Pounds, according to the Statute in that Case made and provided. These are therefore, &c.

A Warrant to reimburse a Surveyor, by charging him who ought to repair, and who neglected after Notice, &c.

One Justice.

Suffen ff. **W** Hereas it hath been duly proved before R. B. Esquire, one of Her Majesty's Justices of the Peace for the County aforesaid, That J. O. of, &c. ought to repair a certain High-way in, &c. as often as the same is in Decay: And whereas upon Oath made before me this present Day, by T. P. Surveyor of the High-ways in and for the said Parish, that he having found a Default in the said Way, did the next Sunday afterwards, as soon as Sermon was ended, give publick Notice thereof in the Parish Church of, &c. and that the same was not amended within Thirty Days after; whereupon the said T. P. did within Thirty Days next following amend the said Default, and that the said J. O. who should have done the same, hath refused to pay the aforesaid T. P. the Charges thereof: These are therefore to will and require you forthwith, upon sight hereof, to levy the Sum of * Twenty Shillings by Distress and Sale of the Goods of the said J. O. and that you pay the same to the said T. P. which said Sum I think reasonable to be levied as aforesaid, in order to reimburse him the Charges laid out in amending the said Way: And hereof fail not. Given under my Hand and Seal, &c.

* 'Tis as the Justice shall think reasonable.

A Warrant against a Surveyor not presenting the State of the Ways at a Special Sessions.

Two Justices. One Witness upon Oath.

Suffen ff. **W** Hereas a Special Sessions was held by the Justices of the Peace for the County aforesaid at, &c. on Monday the 23d Day of March last past, to which Sessions J. O. Surveyor of the High-ways in the Parish of, &c. was duly summoned; and whereas it hath been duly proved before us H. P. and R. B. Esquires, Two Justices of the Peace, &c. that the said J. O. did neglect to appear at the said Sessions, and to present upon Oath the State of the High-ways in the said Parish where he was Surveyor, or what Offences and Neglects any Persons were guilty of relating

High-ways.

337

to the same, by reason whereof he hath forfeited * Forty * One
Shillings : These are therefore, &c. Moity to the Informer, the other to repair the Ways.

Against a Surveyor refusing to Accompt.

To the Constable of, &c.

Suffex ff. **W**Hereas it hath been duly proved before us, H. P. and R. B. Two of Her Majesty's Justices of the Peace for the County aforesaid, That J. O. of, &c. Surveyor of the High-ways in and for the said Parish, hath neglected to give an Accompt upon Oath at any Special Sessions of all Money which hath come to his Hands, and which ought to be employed in amending the High-ways, and how he hath disposed thereof, so that for such his Neglect he hath forfeited the Sum of 40 s. one Moity to the Informer, and the other to repair the High-ways in the said Parish. These are therefore, &c.

Two Justices. One Witness upon Oath.

Against a Surveyor refusing to deliver what remains in his Hands to the succeeding Surveyors.

To the Constable of, &c.

Suffex ff. **W**Hereas T. P. of, &c. this Day made Oath before us, H. P. and R. B. Two of Her Majesty's Justices of the Peace, &c. That J. O. now or late Surveyor of the High-ways in and for the Parish of H. &c. hath refused to deliver to the next Surveyors of the High-ways in the said Parish what Monies remained in the Hands of the said J. O. which ought to be employed in amending the said Ways, which said Money doth amount unto 40 s. by reason whereof he hath forfeited double the Value, one Moity to the Informer, the other to amend the High-ways in the said Parish. These are therefore, &c.

Two Justices. One Witness.

A Warrant against Persons neglecting to work on the High-ways.

To the Surveyors of the High-ways in the Parish of H.

Suffex ff. **W**Hereas due Notice hath been given unto A. B. T. P. J. O. and J. S. all of the Parish of H. aforesaid, Labourers, to work on the High-ways in the said Parish

Parish on certain Days lately appointed for that Purpose, in order to amend the same; and whereas it appeareth unto me by the Oath of, &c. that they, and each of them, have neglected or refused so to do: These are therefore to require you forthwith to levy the respective Sums hereafter mentioned upon the respective Goods and Chattels of the said several Persons by Distress and Sale thereof; that is to say,

| | |
|---|----------|
| | l. s. d. |
| Upon the Goods of <i>A. B.</i> for neglecting two Days, | 0 3 0 |
| Upon the Goods of <i>T. P.</i> for neglecting three Days, | 0 4 6 |

And that you employ the said Sums, when levied, for and towards the amending the High-ways in the said Parish of *H.* And hereof fail not. Given under my Hand and Seal, &c.

A Warrant against a Person for laying Timber, Stones, &c. in the High-way.

To the Constable, &c.

Two Justices.
One
Witness
upon Oath.

Suffex ff. **W**Hereas *R. V.* hath this Day made Oath before us, *T. P.* and *R. B.* Esquires, Two of Her Majesty's Justices, &c. That *J. O.* of, &c. did within Six Months last past lay Timber and Logs in the High-way leading from, &c. in the Parish of, &c. the said Way not being Twenty Foot broad, so that the same was much obstructed, by reason whereof he hath forfeited Five Shillings, one Moiety to the said *R. V.* who hath informed us of the said Offence, the other Moiety towards amending the said High-ways: These are therefore, &c.

The like Warrant against any Owner of Land, who doth not cut down a Tree, Bush or Shrub in the High-way not Twenty Foot broad, within Ten Days after Notice given by the Surveyor.

Indictment for not Repairing.

Suffex ff. **J**Ur', &c. quod communis alta via Regia in Parochia de *H.* in Com. pradiet. continet. in longitudine duas virgat. & in latitudine unam virgatam vicesimo tertio die Martii, Anno Regni, &c. fuit & adhuc est in magno decasu pro defectu Reparationis & Emendationis ejusdem, ita quod ligi dicta Domine Regine per & trans viam illam transeuntes absque magno periculo non possunt transire ad grave dampnum, & commune nocumentum omnium ligearum Subditorum dicta Domine Regine per viam illam transeun-

High-ways.

339

*transcuntium, * & quod R. B. de H. prædict. Gen. viam prædict. reparare debet quoties & quando necesse fuit ratione tenuræ terrarum & tenementorum suorum ibidem prope adjacent, &c.*

* Et quod Inhabitantes villæ de H. ex jure &c ex anti-

qua consuetudine viam prædict. reparare debeant & soliti sunt.

For encroaching and enclosing the High-way.

Suffex ff. Jur. &c. quod T. P. de H. in Com. prædict. Yeoman, 12 die Januarii, Anno Regni, &c. vi & armis apud H. prædict. in Com. prædict. quandam partem communis altæ Regiæ viæ ibidem continen. in longitudine quadraginta virgat. & in latitudine septem virgat. existen. part. communis altæ Regiæ viæ ibidem ducen. à quodam loco ibidem vocat, &c. in H. prædict. usque, &c. cum quibusdam sepiibus & sensuris illicite & injuste incrochiavit & inclusit & eandem partem communis altæ viæ Regiæ præd. sic ut præfertur incrochiat. & inclus. à præd. 12 die Januarii, Anno ult. supradicto usq; 25 die Martii, Anno, &c. apud H. præd. in Com. præd. illicite & injuste continuavit, ac ratione inde communis altæ Regiæ viæ prædict. valde obstruit. & coarctat. devenit ad grave dampnum & commune nocumentum omnium ligetorum Subditorum dictæ Domine Regine nunc in per & trans eandem communem altam Regiam viam euntium transcuntium equitan. & laboran. & contra pacem dictæ Domine Regine nunc Coron. & Dignitas. suas, &c.

Aliter.

Suffex ff. Jur. &c. quod cum à tempore ejus contracti memoria hominum non existit usitat. fuit quod ligei Dom. Reg. habuerunt & legitime usi fuerunt quadam viâ Regiâ communi apud H. in Com. Suffex præd. in quodam loco ibid. vocat, &c. ducen. à villa de H. prædict. usque ad Burgum de L. in Com. præd. pro sepiis & catallis suis absque ulla obstructione aut retardatione per aliquas fossat. sepes aut alia obstacula quacunque quidam tamen W. A. de H. præd. in Com. præd. 23 die Martii, Anno Regni, &c. quandam fossat. & sepe. vivam (Anglice, a Ditch and Quick-set Hedge) apud H. prædict. in prædict. loco super viam Regiam communem præd. ad magnam obstructionem & retardationem ligetorum dict. Dom. Regin. per viam illam transiunt. * effodit & erexit & fossat. & sepe. præd. sic ut præfertur effossa & erecta. adhuc custod. contra Pacem dict. Dom. Regin. Coronam & Dignitatem suas, &c.

1 Lut. 499.

* 'Tis not necessary to say vi & armis, because he may be the Owner of the Land. Poph. 206. But it must conclude contra Pacem. Godb. 59.

For erecting of a Shed.

Suffex ff. Jur. &c. quod W. H. de H. &c. 23 die Martii, Anno Regni, &c. vi & armis, &c. apud H. præd. in & super communem altam viam Regiam fecit & erexit & fieri erigi

Edificari causavit unum rectum (Anglice, a Shed) & eodem recto adiuncto & ibidem quandam partem viae praed' contineri in longitudine duodecim pedes, & in latitudine octo pedes inclusit incrochiavit & obstruxit & praed' partem viae praedict' sic ut praefertur per ipsum W. A. inclusit incrochiavit & obstruxit idem W. A. a praed' 23 Martii, Anno supradicti usque diem captionis huius inquisitionis scilicet primum diem Maii, tunc prox' sequen' vi & armis apud Paroch' praed' in Com' praed' continuavit & adhuc continuat ad grave dampnum & commune nocumentum annuum ligeorum subditorum dict' Domine Regine per communem altam viam Regiam praed' transeuntium & contra Pacem, &c.

Indictment for a Nufance in the High-way.

Suffex II. Jur', &c. quod R. O. de H. in Com' praedict' Butcher, 7 die Augusti, Anno Regni, &c. & diversis aliis diebus & vicibus tam antea quam postea apud H. praedict' in Com' praed' in quodam loco ibidem prope publicum vicum vocat', &c. nec non prope separales domos mansionales diversorum ligeorum Domine Regine subditorum ibidem inhabitantium magnam quantitatem fumi intestinorum al' sordium posuit & locavit ratione cuius & per insalubres odores & fiores abinde proceden' aer ibidem per totum tempus praed' corrupti & infecti existit ad commune nocumentum omnium ligeorum subditorum dict' Domine Regine in & per vicum & viam praed' transeun' in malum exemplum omnium aliorum in huiusmodi casu delinquen' ac contra Pacem, &c.

For laying Rubbish in the High-way.

Middl. II. Jur', &c. quod, &c. in quadam alta via Regia ibidem quinque carrucar' fimi & luti (Anglice, Rubbish) adtunc & ibidem illicite & injuriose posuit & locavit, & locari causavit & ibidem a praedict' 7 Augusti usque 7 diem Septembris prox' sequen' voluntarie remanere permisit ratione inde via Regia praedict' per totum tempus praedict' coarctat' & obstruit' fuit ita quod ligei subditi dictae Domine Regine in per & trans altam & communem viam Regiam praed' ibidem circa negotia sua adeo libere ire transire & redire non potuerunt sicut consuever' & debuer' ad commune nocumentum omnium subditorum dictae Domine Regine per & trans praed' communem altam viam Regiam ibidem transeun' in malum exemplum omnium aliorum in huiusmodi casu delinquen' & contra Pacem, &c.

Holidays.

BY the Statute of 5 & 6 Ed. 6. cap. 3. Several Days are appointed to be kept holy, and amongst the rest, the Feast of St. John Baptist is one. A Man was presented in the Spiritual Court for carrying Hay on that Day, but had a Prohibition, because it was a Work of Necessity, being in Hay-time; and there is a *Proviso* in the Act, to exempt Persons working in Harvest, or upon Necessity.

Homicide.

MANSLAUGHTER or *Homicide*, is the killing of a Man upon a sudden Provocation without any Malice, and in the Heat of Blood.

By this Definition it appeareth, That in Manslaughter,

1. There must be no deliberate Act, but the falling out must be sudden.
2. The Act must be unlawful; for if lawful, then 'tis Chance-medly; and it must be without an Intention of any personal Wrong; for if the Intent is ill, 'tis Murder.

A sudden falling out is, *viz.* If two Men fight, and one of them breaks his Sword, and a Stranger lends him another, with which he kills his Adversary; 'tis Manslaughter falling out in both.

To fight, and part presently; meet, and one is killed; this is a continued Affray, and therefore Manslaughter.

Malice between two; the Deceased challenges the other, who refused to meet, but said he should go to such a Place; the Deceased meets him, and was killed; Manslaughter. *H. P. C.* 48.

Entering a House with Force; those who are turned out of Possession come to set it on fire, and one within shoots and kills another without Doors; 'tis Manslaughter, because the Entry was unlawful. *H. P. C.* 56.

A Servant draws his Sword in Defence of his Master, and in the Affray the Master is killed, 'tis Manlaughter in the Servant. *Sid.* 254.

**Sudden
Provoca-
tion.**
2 Cro. 296.

A sudden Provocation, and Death ensuing, doth so far extenuate the Crime as to make it Manlaughter.

As an Husband killing another committing Adultery with his Wife. *Raym.* 212.

A Prisoner in Execution for Debt escaping, and the Keeper coming to the Place where he is, kills him either in Pursuit or Resisting, 'tis Manlaughter. 1 *Roll. Rep.* 189.

**Unlawful
Acts.**

* Allen
Rep. 12.

Unlawful Acts where Death ensues, are, *viz.* Playing at Foils, *throwing Stones, shooting at Deer in another Man's Park, Forcible Entry, and ejecting another, and such-like are unlawful, but without any malicious Intention to kill, and therefore Manlaughter.

Bailiffs coming to serve an Execution, and the Debtor shuts his Door, which they break open, and one is killed, 'tis Manlaughter, because the breaking of the Door was unlawful.

The Offender has the Benefit of the Clergy the first Time, and forfeits his Goods and Chattels.

1 *Roll.*
Rep. 189.

If a Man is in Execution for Debt, and *Escapes*, and the Gaoler hearing where he is, attempts to take him, and he resisting is killed by the Gaoler, 'tis Manlaughter.

My Lord *Rolles* distinguishes where a Man is in Execution for Debt, and where he is only committed for Felony, and *Escapes*; for in the first Case he says, the Gaoler must go back as far as he can before he attempt any Violence upon the Person, otherwise, if he kill him, it may amount to more than Manlaughter: But I think 'tis his Business to press forward, for otherwise he shall never retake his Prisoner.

Chance-medley, or per Infortunium.

THis is where a Man is killed by another casually, when he is doing any Thing which is lawful, and without any Intent to hurt:

As shooting at a Bird, which is a lawful Act, and killing a Man; the Father or Master correcting a Son or Servant, and Death ensuing.

A House

A House was building Thirty Feet from any common High-way, and one of the Workmen being about to throw a Piece of Timber out of the House, called aloud, *Stand clear*; the Timber fell upon one of the Labourers, and killed him: This was held to be *per Infortunium*, for he was doing nothing but what was lawful and usual to be done; and he could have no ill Intention, because he gave Notice what he was about to do: But if this had been in the Streets in London, it had been Manslaughter, because of the continual Passing of the People; for in such Case it shall be presumed, that his Intention was to do some Mischief.

In this Case the Special Matter must be found, that the Court may judge whether the killing was *per Infortunium*; and therefore 'tis not sufficient to find it generally.

My Lord Coke tells us, there is no express Judgment in Chance medley; but the Offender forfeits his Goods, and hath a Pardon of Course.

This was anciently by *Certiorari* out of Chancery to remove the Record; which being certified, the Lord Chancellor issues forth a Pardon: But now 'tis done by Certificate of the Judge or Justices, &c.

The Form of which Writ is thus:

Quia accepimus* per recordum dilectorum & fidelium nostrorum G. T. Mil. & T. P. Mil. Justiciar. nostrorum ad Gaolam. in Com. Suffex deliberand. assign. quod R. N. captivus & detentus in Gaola predicta pro morte T. R. unde indigne est interfecit ipsum G. T. per Infortunium per quod idem R. Gaola nostre predicta remissus est ad gratiam nostram ibidem expectand. nos pietate moti perdevimus eidem R. sectam Pacis nostra que ad nos pertinet pro morte predicta. & ad firmam Pacem nostram ei inde concedimus, ita tamen quod stet rectum in Curia nostra si quis versus eum loqui voluerit de morte supradicta. In cuius, &c.

*The Way now is by the Certificate of the Judge without a *Certiorari*.

Homicide ex Necessitate.

1. **I**T must be by a proper and lawful Officer, as the Sheriff, and not by a Stranger, for then 'tis Felony.
2. The Judgment must be given by one who had a proper Jurisdiction to try the Cause; for if a Justice of Peace give Judgment in Treason, the Execution is Murder, both

In the Execution of the Offenders.

Homicide ex Necessitate.

In him and in the Officer; if in Trespass he give Judgment of Death, 'tis Felony in him, but not in the Officer.

3. The Execution must be pursuant to the Judgment: See *post* in Judgment.

In Advance-
ment of
Justice.

In Cases Criminal; as if a Man indicted for Felony is killed by an Officer, whom he resists, having a Warrant to apprehend him.

Or if a Prisoner is killed by an Officer carrying him to Gaol, and endeavouring to escape after a Felony actually committed.

Or if a Prisoner is killed by a Gaoler, the Prisoner assaulting him.

For if a Felon by Resistance or Flight cannot be taken without killing, he who kills him must be acquitted without Forfeiture of Goods, because every Man is warranted by Law to apprehend him, but then there must be a Felony actually done; which Circumstance is not required where a Man hath a Warrant to take a Felon. 3 Inst. 221.

In Cases Civil.

Resisting an Officer, who hath any legal Process, and killed by him.

Upon Not Guilty pleaded, the Special Matter must be given in Evidence, and it being found for him, he is to be acquitted without Forfeiture or Pardon.

But in all these Cases the Necessity must be unavoidable, and there must not be any Colour of Malice.

Homicide is justifiable, and no Forfeiture.

In Defence of
House or
Goods.

As if I kill a Man who sets my House on Fire; or a Thief who steals my Goods, or comes to rob me.

If a Woman kill a Man that endeavoureth to ravish her: But if I kill a Man claiming a Title to my House, and endeavouring to enter, 'tis Manslaughter.

Self defence.

This *Homicide* is excusable, but the Goods are forfeited.

But then it must be done only upon an inevitable Necessity, and he must give back as far as he can without endangering his own Life.

And the mortal Wound must be given after the Party retires to the Wall; for if before, 'tis Manslaughter.

Casual

Casual Death.

THis is when a Man is slain otherwise than by the Hands of another; as by a Fall by a Horse or Cart, &c.

'Tis the proper Office of a Coroner to enquire of such Death, which he is to do by Jury, &c.

Any Thing which is the Cause of such Death, is forfeited to the Queen, but not till found by Matter of Record; and this Forfeiture shall have Relation from the Time of the Stroke given, so that if the Owner sell the Goods after that Time, and before the Inquisition taken, the Property is not bound, but the Queen shall be entitled to it.

Therefore cannot be claimed by Prescription.

Deodand.

MY Lord Coke defines this to be when any moveable Thing which is inanimate, or a Beast animate, causeth the untimely Death of a Reasonable Creature, without the Will, Offence, or Fault of himself; but it must be on the Land, and not on the Sea. 3 Inst. 57.

This being found by Inquisition, is forfeited to the Queen, as being *precium Sanguinis*, to be distributed in Works of Charity to appease the Wrath of God.

If the Party slain by a Fall is under 14 Years of Age, then no Deodand is due; but if he be kill'd by an Ox or Horse, &c. that is a Deodand. Deodand. Raim. 208.

But if he come to any casual Death by the Means or Procurement of another, 'tis Felony in him.

This seems to be a very nice Distinction in the old Books, that the Horse or a Cart from which a Boy under 14 Years falls, should not be a Deodand; and yet if he is killed by a Horse, and is under that Age, the Horse shall be a Deodand. I do not find any Reason given by Justice Stamford, or any of them, for this Distinction, nor by my Lord Coke himself, who took it upon the Authority of the old Writers; but probably this may be the Reason, (*viz.*) A Boy under 14 may not have Discretion to ride the Horse; and therefore may be the Occasion of his own Fall, and this seems to agree with the Definition above-mentioned: However, the Law is otherwise now, and Justice Twissden was of Opinion, That there was no more Reason for this Distinction, than for to cut off the first Joint of the Thumb of a Cut-purse, which was Law formerly, but now 'tis not. A Man

A Man ringing a Bell, was strangled with the Rope; it was a Question, Whether the Bell should be a *Deadand* or not, because, as 'twas objected, it was fastened to the Freehold, and given to God before? There was no Judgment given; but Two Judges were of Opinion, That it was not a *Deadand*, 1 *Levinz* 136. Two Men riding over the *Trent*, were drowned by the Violence of the Water; their Horses were not *Deadands*, because the Men were drowned by the Violence of the Stream, and not carried by their Horses out of Depth. 2 *Roll. Rep.* 23. 3 *Cre.* 483. *Poph.* 136.

Horses.

Breed of
Horses,

IN order to preserve the Breeding of strong Horses, a Law was made, 32 H. 8. cap. 13. prohibiting Persons to put Stone-horses above Two Years old, and under Fifteen Hands high (every Hand being four Inches) into Forrefts or Commons where Mares are kept, upon Pain of forfeiting the Horse: After this Manner;

Viz. The Horse must be brought to the next Pound by the Keeper of the Ground, Constable, or Headborough of the next Parish, and must be measured by him in the Presence of three other sufficient Men, and if found under that Stature, he who seized him, may take him to his own Use.

Refusing to measure, or to be present at the Measuring, Forfeiture is 40 s. a piece for each Offence, one Moiety to the Queen, the other to the Prosecutor.

Justices in Sessions may hear and determine Offences against this Act, and Stewards in Leets may take Presentments only, but must certify them to the next Sessions, upon Pain of 40 s.

But this Statute doth not extend to the Fen-Grounds in *Ely*, nor to the Counties of *Cambridge*, *Huntingdon*, *Northampton*, *Lincoln*, *Norfolk* and *Suffolk*, so that the Horses there kept are not under thirteen Hands; nor to the County of *Cornwall*. 8 *Eliz.* 8. 21 *Jac.* 28.

Scabbed or infected Horses shall not be put in common Fields, on Pain to forfeit 10 s. to the Lord of the Leet.

Export-
ing Horses.

Next to breeding Horses, Care was taken that they should not be exported; and therefore by an Act of 1 *Ed. 6.* cap. 5. it was provided, That no Person should sell or convey, or any Horse, Mare, &c. out of *England*, without the King's Licence; the Forfeiture is of the Horse it self, and 40 l. more to be divided between the King and Prosecutor.

The Justices had Power to hear and determine this Offence in their Sessions.

But now, by 22 *Car. 2. cap. 13.* any Horse may be exported, paying 5 s. at the Custom-house.

Horses being often stolen, and sold in Stables, and in private Places, a Statute was made, 2 & 3 *Ph. & Mar. cap. 7.* To prevent that Mischief, it provides,

That Owners of Fairs and Markets shall appoint a Toll-taker, and where that is not taken, a Book-keeper, who shall sit in the Fair from Ten in the Morning till Sun-set, or forfeits 40 s. for every Default.

He must enter into his Book, the Names and Dwelling of the Buyer and Seller, the Colour and Mark of the Horse sold, or forfeits 40 s.

The Book in which the Entry is made, must be delivered a Day after the Fair to the Owner or Keeper of the Fair, who shall make a Note of the Number of Horses sold, and shall subscribe it, on Pain of 40 l.

The Property of stolen Horses shall now be altered,

1. If not rid, or stand open in the Fair One Hour. This my Lord Coke tells us is in Affirmance of the Common Law.
2. All Parties to the Contract must be present with the Horse, and before the Book-keeper.
3. Their Names must be enter'd in the Book, and their Dwellings, and the Colour and Mark of the Horse.

Justices in Sessions have Power to hear and determine Offences against this Law.

But Horse-stealing still encreasing, by Reason the Thief could sell them in Fairs and Markets, pursuant to the aforesaid Act, to Horse-Courfers, and at a great Distance from the Owners; therefore, to preserve the Property still in them, another Law was made. 31 *Eliz. cap. 12.*

1. That no Sale shall be made in Fairs, unless the Toll-taker or Keeper know the Seller, or unless he bring some credible Person who knoweth him.
2. The Names, Surnames, Mystery and Dwelling, of both of them, and the Price of the Horse sold, must be enter'd in the Book.
3. The Book-keeper must give the Buyer a Note of these Particulars subscribed by him, if required, paying 2 d. for the same.
4. He who sells without being known to the Book-keeper, or without bringing a Voucher; and he who voucheth without knowing the Seller, and the Book-keeper

To prevent selling of Horses in a clandestine manner.

31 *Eliz. cap. 12.*

1 *Lut.*

keeper making Entry without knowing either, forfeits each of them 5 l. one Moiety to the Queen, the other to the Prosecutor, and the Sale is void.

Now though the Sale be in all Circumstances pursuant to this Act, yet the Property is not bound, if the right Owner claim within six Months after 'tis stolen: Which he must do in this Manner;

If the Horse is found in a Town Corporate, then he must claim him before the Mayor, or Chief Officer; if in the County at large, then before a Justice of Peace.

The Proof must be by Two Witnesses upon Oath, who must depose before such Mayor, Chief Officer or Justice, within Forty Days after the Horse is found, that the Property is in the Person claiming, &c. and that the Horse was stole from him within six Months next before the Claim.

Upon this Proof, the Party shall have his Horse, paying the Buyer what he shall depose he gave for the same.

Clergy taken away from Accessories before and after the Fact.

Selling a Horse by a false Name, maketh the Sale void.

Indictment against a Horse-Stealer, and his Accessary after the Fact.

Suffex ff Jur', &c. quod J. O. nuper de H. in Com' præd' Labourer, 25 die Maii, Anno Regni, &c. vi & armis apud H. præd' in Com' præd' unum Spadonem (Anglice vocat. a Gelding) coloris nigri & pretii decem librarum de bonis & catallis cujusdam M. V. adtunc & ibidem invent' felonice cepit & asportavit contra pacem dictæ Domine Regine nunc coron' & dignitat' suas, & quod T. O. nuper de H. præd' in Com' præd' Labourer, sciens præfat' quod J. O. Feloniam præd' apud H. P. modo & forma præd' fecisset & perpetrasset eundem J. O. apud H. præd' in Com' præd' die & Anno supradictis Felonice recepit, confortavit & auxiliatus est post Feloniam præd' sic per ipsum J. O. ut præferitur commissam contra pacem, &c.

Houses, where they may be broke open, See Arrests, and Doozs.

Houses of Habitation.

THese are privileged by the Law in several Respects.

They are Castles for the Defence of the Inhabitants.

They

houses of habitation.

349

They protect the Persons of Men from any Arrests on *Mesne* Process at the Suit of any Subject.

A House may be defended by Force against Thieves or Robbers; and if killed, 'tis not Felony.

But notwithstanding these Privileges, it may be broke open in these Cases following; the Person first signifying the Occasion of his coming, and requiring the opening of the Doors, and being refused:

1. In Treason, Felony, or Suspicion thereof.
2. To apprehend any Person who hath dangerously wounded another, being freshly pursued.
3. An Affray being in a House, the Constable may break it open to keep the Peace.
4. Upon a Forcible Entry or Detainer found by an Inquisition.
5. To apprehend any Person upon a *Capias Utilegatum* or *Fine*, or upon Process of Excommunication, or upon a Warrant of the Peace, or good Behaviour.
6. Upon a Recovery in a real Action, the Sheriff may break it open to deliver Possession.
7. And generally in any Case where the Queen is Party, or hath any Interest; for no Man's House shall protect him against the Queen.

house of Correction.

Many Laws have been made for punishing Beggars and idle Persons, but none to set them on Work before 39 Eliz. cap. 4. which gives the Justices in Sessions Authority in Three Things:

1. To appoint that Houses of Correction be built.
2. To make Orders for Maintaining and Governing them when built.
3. To see that the Offenders sent thither be set to work, or punish'd.

My Lord Coke tells us, That for some Time after this Law was made, and until the Justices became remiss in their Duty, there was not a Rogue to be found in the Kingdom.

But the Justices taking no Care for the Building or Providing such Houses, and neglecting to put the Law in Execution; another Statute was made, 7 Jac. cap. 4.

Building
a House of
Correc-
tion.

That a House of Correction shall be built or provided in every County within a Time therein limited, with all Conveniences to set Rogues and idle People to work, or every Justice shall forfeit 5*l.* one Moiety to the Prosecutor, the other towards building the House.

Which House, when built or purchased, shall be conveyed to Persons appointed by Justices in Sessions in Trust, to be employed for the keeping, correcting, and setting to work, Persons sent thither.

Master
thereof.

He is to be appointed by the Justices in their Sessions; he is to set on Work, and moderately to correct Persons, by Whipping or Fettering them, if unruly.

He is Yearly to have such an Allowance as Justices in Sessions shall think fit; which is to be paid Quarterly by the Treasurer of the County-Stock; and in Default of such Payment, he may levy it upon the Treasurer by Distress and Sale of his Goods.

He is to give Account Quarterly, at the Sessions, of all Persons who have been committed to his Custody, and if any escape without being discharged by due Course, the Justices in Sessions may fine him at Discretion; the Fine is to be paid to the Treasurer of the County-Stock.

The Justices shall meet Twice in every Year to put this Act in Execution; and before their Meeting, shall by Warrant command Constables, &c. of every Hundred, Town, and Hamlet, to make a general but private Search in one Night within their Precincts, to apprehend Rogues, Vagabonds and idle Persons, and to bring them before the Justices.

What is
required
to be done
by the Ju-
stices and
Consta-
bles.

The Constables at that Meeting must give an Account in Writing upon Oath, and under the Minister's Hand, what Rogues have been taken in this Precinct, and how many punished, and conveyed to the House of Correction.

A Constable neglecting in the Premises, as also at the Charge of the Hundred, safely to convey such Rogues, &c. with all other idle and disorderly Persons, as by the Justices Warrants shall be sent thither, (These Words, my Lord Coke says, ought to be specially observ'd:) may be fined at Discretion by Justices, so as it exceed not 40*s.*

Who may
be sent
thither.

Ale-house-keeper selling Ale after Conviction.
Any Person running away, or threatening so to do, and to leave their Families to the Parish; but of this, Two Witnesses must make Oath before Two Justices.

Bastard-

Bastard-Child, the Mother thereof not able to keep it ;
but if a Woman is delivered there, it must be sent
to the Place from whence she came. 2 Bulst. 338.

Beggars sturdy.

Cheaters must be bound over to Sessions, and they may
send them to the House of Correction.

Corn-spoilers.

Hedge-breakers.

Labourers under 30, and not having wherewith to live
without working, and refusing.

But if they have Means to support themselves, and they
are Idle and Disorderly, may be sent thither.

Orchard-robbers.

Parents of poor Children, enticing them from their
Masters.

Poor Children refusing to be put Apprentices.

Rogues, whose Place of Birth or last Dwelling for a
Year cannot be known, or refusing to tell the Place
of Settlement.

Servants running away, or those who are idle and dis-
orderly, or who are out of Service, and warned by
Two Justices to go to Service by a Day prefixed.

Trespassers common.

Vagabonds.

Wood-cutters.

And generally any Person whatsoever who lives in a pro- Sid. 281.
fuse Manner, having no visible Estate to support himself,
any such Person may be set to work there, but not whipped
till convicted in Court, and may be continued there till he
satisfie the Justices how he lives.

But the Way of Conviction is not appointed in many of
these Cases, therefore it must be in Sessions, and from thence
the Commitment must be made ; and in the mean Time the
Justice may require Sureties for his Appearance there.

Mittimus of an idle and disorderly Person.

To the Keeper of the House, &c.

Suffex ss. [Send you herewithal J. O. of H. in the said Coun-
ty, being an idle and disorderly *Person, and who
will not employ himse'f, or be employed in any honest Way
to get a Livelihood: I therefore require you to receive the
said J. O. into your Custody, and him safely to keep until
he shall be lawfully discharged ; and in the mean Time to set
him to work, and to give him moderate Punishment by
whipping,

*(If a Ser-
vant, then
say) And
one who
will not
stay in Ser-
vice.

House of Correction.

whipping, allowing him also such Maintenance as he shall deserve by his Labour; and that you bring the said J. O. to the next Quarter Sessions, &c. together with this Warrant. And hereof fail not, &c.

For one taken by the Watch.

To the Keeper, &c.

Suffex ss. **W** Hereas J. O. was brought before me this present Day, by R. K. Constable of, &c. being taken last Night by his Watch, and is charged with wandring abroad, and other idle, lewd and disorderly Behaviour and Course of Life, contrary to the Laws. These are therefore to require you to take the said J. O. into your Custody, and him safely to keep until he shall be delivered by due Course of Law; and in the mean Time to set him to work, and to give him such Punishment and Maintenance as by Law is required; and that you bring the said J. O. to the next Quarter-Sessions to be holden, &c. together with this Warrant, &c.

Hue-and-Cry.

13 Ed. 1.
27 Eliz.

T His is a Pursuit of any Person after a Felony committed, and flying for the same.

'Tis to be made from Town to Town, and from County to County, by Horse-men and Foot-men; and of this, there are Two Sorts:

1. Hue-and-Cry by the Common Law; which is, where a Felony is committed, or any Person wounded, the Party grieved, or any other in his Behalf, may resort to the Constable of the next Town, and acquaint him therewithal, describing the Party, and telling him the Way he is gone; who thereupon is to raise the Town, and to give the next Constable Notice, and he the next, and so on to the Sea-side; and this my Lord Coke says, was the Law before the Conquest.

And those who neglect to make Hue-and-Cry, or do not pursue it when made, shall be fined and imprisoned.

2. Hue-and-Cry by Force of Statutes are many, but chiefly upon the Statutes of Robberies.

As by the Statute of *Winton*, the whole Hundred is made liable in which a Robbery is committed; but now by 27 *Eliz. cap. 13.* the Inhabitants of any Hundred where Hue-and-Cry is made, and if they shall neglect to pursue, must answer one Moiety of such Damages which shall be recovered against the other Hundred.

This

This Statute of Ed. 1. extends only to Robberies done to the Person, for it was made for the Safety of Travellers; and therefore if a House should be robbed in the Day-time; and the Felons escape, and Hue-and-Cry is made and they are not taken, the Hundred shall not be answerable for the Reason above-mentioned.

The Person robbed should give Notice as soon as he can.

He usually goes to a Justice of Peace, and is examined after this Manner:

Cro. Eliz.
753.
Moor 620.

Noy 155:

The Examination of R. K. of, &c. taken upon Oath before R. B. Esq; one of Her Majesty's Justices of the Peace for the County of, &c. on the 25th Day of May, 1706.

THis Examinant saith, That on Tuesday the 19th Day of this Instant May, he was assaulted in the High-way leading from, &c. at or near a Place called, &c. about Ten of the Clock in the Morning of the same Day, by Three Men on Horse-back, who seized this Examinant, and carried him out of the Road to a By-place adjoining, and robbed him of, &c. And farther saith, That he is since informed that the said High-way and By-place are both in the Parish of H. and within the Hundred of, &c. in the said County, and that he did not then, or yet doth know either of the Persons who committed the said Robbery.

A Warrant for a Hue-and-Cry.

To all Constables, Headboroughs, and other Officers, as well in the said County of Sussex; as others to whom the Execution hereof shall belong.

Suffex ss. WHereas I am credibly informed; That Three Persons (here describe their Age, Colour, Apparel, Horses, &c.) did on the 19th Day of this instant May, assault and take from R. K. of, &c. Ten Pounds, &c. and that they are since fled for the same, and not yet apprehended: These are therefore to command you forthwith to make diligent Search within your Precincts for the said Persons, and to make Hue-and-Cry after them from Town to Town, and from Country to Country, and that as well by Horse-men as Foot-men, according to Law; and that if you shall find them, or either of them, that then you bring them before some one of Her Majesty's Justices of the Peace for the County where he or they shall be taken, to be dealt withal according to Law. And hereof fail not, &c.

A

Hue

Hue-and-Cry raised without Cause, is a Breach of the Peace.

And if it be made falsely, and the Person enter into a House, though with a Constable, and bind and rob the Master in the Night, 'tis Burglary.

Hundred.

Noy 155.

TO charge the Hundred with a Robbery, these Things must be done:

1. The Person robbed must with all convenient Speed give Notice of the Robbery to some Inhabitant near the Place where he was robbed.

2. He must be examined upon Oath within Twenty Days next before he brings his Action, by one Justice dwelling near the Hundred where the Robbery was done, whether he knew the Robbers, or either of them, and if he did know them, then he shall be bound before the Justice to prosecute them.

3. The Hundred is not chargeable if any of the Offenders are taken, though after the Twenty Days limited by the Statute of 28 Ed. 3. cap. 11. for the taking them. *Sid. 11.*

4. The Action must be brought within a Year after the Robbery done.

After Recovery and Execution of Damgages, it may be levied on one Person; but then upon Complaint, &c. two Justices of the Hundred, *Quorum unus, &c.* may take in Proportion the Towns, Villages, Parishes and Hamlets of the said Hundred, to make an equal Contribution to relieve the Persons against whom Execution was taken.

After such Taxation, the Constables and Headboroughs of every Parish in the said Hundred shall assess the Inhabitants according to their Abilities, to pay the Sum taxed or laid by the Justices upon their respective Parishes.

Constables, upon Refusal of any Inhabitant to pay the Assessment, may distrain and sell, rendering the Overplus, and after it is levied, shall within Ten Days deliver it to the Justices, or one of them, and the Justices must pay it to the proper Persons.

Like Taxation for a Contribution of a Moiety out of a Hundred where any Default was in Pursuit, &c. to reimburse the Hundred where the Robbery was done.

In order to bring the Action, the Person must make an Oath, as followeth:

June 1. 1702.

Suffex ss. **R.** B. of C. in the said County, Gentleman, came before me **H. P.** Esq; one of Her Majesty's Justices of the Peace, &c. the Day and Year above-written, and made Oath, That on *Monday* the, &c. about Eight of the Clock, &c. Travelling from, &c. he was assaulted in the common Road, three Miles from, &c. in a Field, by three Horsemen, one of them being a Man of about 25 Years of Age, &c. (describing also their Habits and Horses, &c.) which said three Persons then robbed this Deponent, taking from him by Force 20 l. and a Mare; and the said **R. B.** did farther depose, That he doth not know the said Persons, or either of them.

R. B.

Jurat. Die & Anno supradictis coram me,

H. P.

A Warrant to assess and levy the Money for a Contribution, being recovered against the Hundred, and levied on two Men.

To the High-Constable of the Hundred of **L.** and to all Petty-Constables and Headboroughs of the said Hundred.

Suffex ss. **W**Hereas **R. B.** of, &c. was lately robbed of 20 l. in the said Hundred of **L.** and hath since obtained a Judgment at Law against the Inhabitants thereof, which said Sum of 20 l. hath been levied and charged only upon **J. S.** and **T. P.** two of the Inhabitants of **H.** within the said Hundred; who have now made Complaint to us thereof: And whereas we have set a Rate upon the Parishes and Villages within the said Hundred for the raising the said Money, pursuant to the Statute in that Case made and provided; which said Rate is hereunto annexed: These are therefore to require you the said High-Constable forthwith to give Notice thereof to the Petty-Constables and Headboroughs, immediately after such Notice, equally to set and impose upon the several Inhabitants of the said Parishes the respective Sums thereon-rated, according to their Method of Rating for the

the Poor of the said Parishes, and afterwards to demand the same, and to levy it by Distress and Sale of the Goods of such of the said Inhabitants respectively, who shall refuse to pay the Sum on him or them set or imposed; and having received and levied the same, that you do forthwith pay it unto us, or one of us, that the said J. S. and T. P. may be reimbursed; and you are farther required to give an Account unto us, within Ten Days next after the Date hereof, what you shall have done in the Premises: And hereof fail not. Given under our Hands and Seals, &c.

The Form of the Rate.

Sussex ss. **A** Rate made by R. B. and G. G. Esqs; two of Her Majesty's Justices of the Peace for the County of *Sussex*, for the raising of 50*l.* on the Rape of *L.* which said Rape is charged with the said Sum which hath been levied upon *A. S.* and *W. N.* two of the Inhabitants thereof, by vertue of a Judgment had and obtained by *R. S.* against the said Rape, for a Robbery done and committed therein.

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-------------------------------|-----------|-----------|-----------|
| The Parish of <i>H.</i> _____ | 05 | 00 | 00 |
| The Parish of <i>B.</i> _____ | 06 | 00 | 00 |
| The Parish of <i>R.</i> _____ | 08 | 00 | 00 |
| The Parish of <i>O.</i> _____ | 10 | 00 | 00 |
| The Parish of <i>N.</i> _____ | 07 | 00 | 00 |
| The Parish of <i>L.</i> _____ | 10 | 00 | 00 |
| The Parish of <i>T.</i> _____ | 04 | 00 | 00 |

All which Parishes are within the Rape of *L.* aforesaid.

The Action against the Hundred must always be by *Writ*, and not by *Bill*, because 'tis brought against the Inhabitants of a whole Hundred; who, by Reason of their Number, cannot be *in custodia Marefcalli*, &c.

And 'tis not material in what Parish the Robbery is done, so 'tis done in the Hundred against which the Action is brought; but the Parish must be alledged in the Declaration.

Neither is it material, whether 'tis done after Sun-setting, or before, for the Hundred is chargeable if the Robbery is committed during Day-Light, which is a convenient Time for People to travel. 7 *Rep.*

Two Hundreds.

If Robbers seize a Horse in one Hundred laden with Money, and they lead him into another Hundred and take away the Money, there the first Hundred is chargeable, because the

the first seizing was a Robbery; but if the Owner himself had led the Horse into another Hundred, then that Hundred where the Money was actually taken had been liable, because till then it was in his Possession.

And therefore it has been adjudged, that if a Man is set upon in one Hundred, and carried into another and there robbed, that Hundred is liable, because the Money was not out of his Possession in the Hundred where he was seized. *Goldf. 86.*

The same Law if a Man is assaulted in one Hundred and pursued to another, and there robbed. *Hutt. 125.*

If Goods are sent by a Carrier who is robbed, he must make Oath, and not the Owner. *1 Leon. 323.* Who must make Oath.

A Servant delivered his Master's Money to a Quaker to carry Home, they were both robbed, and the Servant made Oath, but the Quaker refused, and the Master brought the Action; it was adjudged ill, as to the Money of which the Quaker was robbed, but the Servant alone might have maintained the Action.

So if the Servant be robbed, the Master, tho' absent, may bring the Action. *1 Cro. 26. 2 Roll. Abr. 686.* But in this Case the Servant must make Oath, &c. and the Master may be a Witness at the Trial, to prove the Delivery of the Money or Goods to the Servant, tho' in his own Case. *Nasa,* This was against the Opinion of *Rolls*, Chief Justice.

He is not a Judge but a Minister in this Case, and therefore if he refuse to administer the Oath, &c. he is liable to an Action at the Suit of the Party grieved. Justice of Peace.

And therefore tho' the Statute of 27 Eliz. directs, that the Oath and Examination shall be before a Justice inhabiting in or near the Hundred, yet if it be taken by a Justice in London, dwelling near the Hundred, 'tis good, because the Statute gives him no Jurisdiction, but is directory only how and in what Manner the Oath and Examination should be. *1 Cro. 153.*

Hunting.

Suspected of Hunting unlawfully in Chases, Warrens or Forrests, in the Night-time, with painted Faces or other Disguises, may by a Warrant be brought before a Justice; and if upon Examination he conceal the Hunting, or any of the Offenders, such Concealment is Felony; if he confesseth, then 'tis an Offence finable by Justices at next Sessions. *1 H. 7. cap. 1.*

My Lord *Rolls* tells us, There are Four Things requisite to make this Offence Felony. *2 Ro. Rep. 133.*

Hunting.

1. An Information to a Justice of Peace for the Offence.
2. His Warrant upon it.
3. The Examination of the Offender.
4. His denying the Fact.

But the Felony seems to consist chiefly in the denying the Fact, the Words of the Statute are, *wilfully concealing it*, but upon the Conviction the Offender shall have Clergy.

Convicted of Hunting, &c. with painted Faces, is *Felony*: Disobeying a Justice's Warrant, or rescuing himself from the Officer, so that the Warrant cannot be executed, *Felony*.

When the Offender is examined, if he *confess*, he may be bound to the Good Behaviour with Sureties, or be committed, otherwise it may happen that he may not be found if any *Concealment* should be proved against him, because that is made Felony. *1 H. 7. cap. 7.*

Hunting in Parks, Woods or enclosed Grounds; three Months Imprisonment; bound to Good Behaviour, with Sureties for seven Years.

Justices in Sessions may determine this Offence, the Offender shall pay treble Damages, to be assessed by Justices in Sessions; and upon Satisfaction an Acknowledgement of the Offence, they may release the Good Behaviour. *5 Eliz. cap. 21. 3 Jac. cap. 13.*

Any Hunting unlawfully by more than Three, is a Riot.

A Warrant against One hunting in Corn.

23 Eliz. cap. 10.
One Justice hath Power to examine, and to bind over to the Sessions, where this Offence is to be tried upon an Information.

Suffex ff. **W**Hereas Complaint hath been made unto me, That *P. S.* of the Parish of *H. Gent.* did, on the 27th Day of June last past, hunt with Spaniels in the Ground of *W. A.* and without his Consent, there being Corn then standing, growing and eared in the said Ground, by Reason whereof the said *P. S.* hath forfeited the Sum of 40 s. to the said *W. A.* being the Owner of the said Corn: These are therefore in Her Majesty's Name to command you forthwith, upon Sight hereof, to warn the said *P. S.* personally to come before me, or some other Justice of the Peace of this County, to be examined concerning the Premisses. Given under my Hand and Seal, &c.

If the Offender doth not appear on the Return of the Warrant, then instead of those Words (*to be examined*), say,

To give Bond with Sureties for his Appearance at the next General Sessions of the Peace to be holden for this County, to answer the Premisses; and if he shall refuse so to do, that then you safely convey him to the Gaol of, &c. and deliver him

him to the Keeper thereof, commanding you the said Keeper to receive the said P. S. into your Custody, and him safely to keep until he shall find Sureties as aforesaid. Given under my Hand and Seal, &c.

A Licence to Hunt, and take away Dogs, &c.

I Sir T. P. of, &c. have given and granted, and by these Presents do give and grant unto R. B. of, &c. Gent. full Power to hunt from Time to Time, and at all Times hereafter, for and during the Term of, &c. in or upon the Manor or Lordship of H. in the said County, and in and upon the Lands and Grounds thereof, doing no Damage to the Owner or Owners of any Corn, Grass, Hay or Woods there. And I the said Sir T. P. do hereby likewise give Power and Authority unto the said R. B. at any Time, during the said Term, to seize and carry away the Dogs of any Person or Persons, who shall at any Time hereafter, within the Term aforesaid, be found Hunting within the said Manor without the Licence or Consent of the said R. B. and to cause the said Dogs to be delivered to the Bailiff of me the said Sir T. P. to be used by me in such Manner as I shall think fit. In Witness whereof, I the said Sir T. P. have hereunto set my Hand and Seal this 28th Day of June, Anno Dom. 1706.

An Indictment for keeping Hounds, not having One Hundred Pounds per Annum.

Middl. ff. JUR. &c. quod T. W. de, &c. in Com. præd. Yeoman, vicesimo nono die Septembris, Anno regni, &c. & diversis aliis diebus tam antea quam postea apud H. præd. in Com. præd. habuit & custodivit * Canes ad venand' & seband. Lepores & Cuniculos, & quod idem T. W. die Anno & loco supradictis duos Cuniculos valoris sex denariorum in quadam clauso R. B. de H. præd' Arm. vocat. the Warren, infra Parochiam præd' cum Canibus præd' venatus est & occidit ubi idem T. W. nunquam habuit terras aut tenementa vel alium statum hereditarium in jure suo proprio vel jure uxoris sue clari annual. valoris centum librarum per Annum, nec tempore venationis præd' habuit aliquam dimissionem vel dimissiones pro termino vite sue vel pro termino 99 Anorum vel pro alio longiori termino clari annual. valoris 150 l. neque ad tunc existens filius & heres apparens alicujus Armigeri vel alie Personæ de altiori gradu aut proprietar. (Anglice, the Owner) alicujus Forestæ Porci, Chasea, (Anglice, a Chase) vel vivarii in dictæ Dom' Reg' nunc contemptum ac contra formam statuti in hujusmodi casu edit. & provis. &c.

22 & 23
Car.2.c.25.

* If Grey-hounds, then say, Anglice, Grey-hounds, If a Hare, then say, Unum Leporem valoris unius solidi infra Parochiam præd' &c.

For Hunting by Night in a Park, and concealing it.

1 H. 7.
cap. 7.

Middl. ff. **J**UR. &c. quod J. O. de, &c. & R. B. de eodem, Yeoman, primo die Septembris, Anno Regni, &c. congregatis sibi quamplurimis aliis malefactoribus ignotis inter horas undecimam & duodecimam in nocte ejusdem diei vi & armis, viz. baculis, bombardis, arcubus & sagittis Parcum dictæ Dom. Reg. apud L. in Com' præd' fregerunt & intraverunt & duos Damas dictæ Dom. Reg. (Anglice vocat, Bucks) in dicto Parco adiunc & ibidem depascen. illicite venati sunt & cum plumbeis glandibus ex dictis bombardis emissis occidebant & sic occisas asportaverunt contra pacem dictæ Dom' Reg' ac quod postea, scil. quinto die Septembris, Anno primo supradicto R. W. Parçarius dictæ Dom' Reg' parci sui præd. apud H. præd' informavit H. P. Armigerum, unum Justiciar. dictæ Dom. Reg' ad pacem in Com' præd' tenend. assign. de illicita venatione illa modo & forma præd' facta qui quidem Justiciarius postea, scil. præd' quinto die Septembris. Anno supradicto direxit Warrantum suum in scriptis cuidam W. V. uni Constabulario Hundredi de L. in Com' præd' (in quo quidem Hundredo sita est præd' villa de H.) ejus tenor fuit quod idem Constabular. caperet præd' J. O. & R. B. ac duceret eos coram præfat. H. P. de dicta illicita venatione examinandos. Ac quod præd' J. O. & R. B. postea scil. præd' quinto die Septembris, Anno supradicto coram dicto Justiciario apud H. præd' in Com' præd' per præfatum Constabularium virtute Warranti præd. adducti fuerunt ac per eundem Justiciarium per discretionem suam de prædicta illicita venatione & de malefactoribus in ea parte adiunc & ibidem examinati existentes prædictam venationem voluntarie & felonice concealaverunt & quilibet eorum voluntarie & felonice concealavit contra pacem dictæ Dom. Reg. Coron. & Dignitates suas necnon contra formam Statuti in hujusmodi casu edit. & provis. &c.

Indictment,

IS the Verdict of a Jury charged to enquire into the Offence, &c.

This being in the Nature of a Declaration for the Queen, ought to be certain, and must not be supplied by Implication or Intendment; and if 'tis upon a Penal Statute, never recite it, because a small Misrecital makes it vicious.
3 Bullst. 212.

In every Indictment, these Things are requisite;

There-

Indictment.

361

Therefore *Misnomer* shall not be made good by an *Alias dictus*.

But where the Name of the Offender cannot be known, it may be *cujusdam ignoti*, because the Queen is entitled to the Forfeiture; and if 'tis for Goods stolen, they may be carried into another Country, and so the true Owner not known. *Dyer 99. Moor 466.*

One of the Regicides was indicted by the Name of *Henry Martyn*, who said, That his Name was *Marten*, but being known by that Name, and being the same in Sound, though it differs in one Letter in the Spelling, the Indictment was held good.

Indictment for stealing a certain Piece of Linnen, *cujusdam A. N.* and did not say, *De bonis & catallis cujusdam A. N.* this is naught, for it must appear whose Goods they were at the Time of the taking, if that can be known, because they may be lent or pawned to another.

'Tis good by another Name, if the Party is known by both.

If there is a wrong Addition, or none at all, yet if the Party appear, that Fault is cured. *Std. 247.*

Indictment for murdering his Wife, setting forth, That she was in *pote Dei*, &c. *quousq;* the Husband, *presat*, the Wife *de H. prad' in Com' prad.* Yeoman, &c. the Judges were in great Doubt, whether this Indictment should be quashed for want of an Addition, because if the Word *Yeoman* should relate to the last Antecedent, then it must refer to the Wife; but at last they considered, that, *ex vi termini*, this was not an Addition to a Woman, and therefore the Indictment good.

The Place of Abode is expressly required by the Statute of 1 H. 5. cap. and this Omission is not helped by the Statute of Amendments, for 'tis excepted out of that very Act.

If there are two Villages in one Parish, the Offender must be named of such a Vill, in *Parochia de H.* and not of the Parish generally.

As to this Matter, any Certainty by which the Year and Day may be known is sufficient.

An Offence committed before *Midnight*, must be laid in the Indictment to be done the Day before; if after *Midnight*, then the Day after.

Striking one Day, and the Party dieth a Week following, the Day on which he dieth must be set forth.

So a Stroke 1 Maii at B. &c. and Death the Day following at R. & sic felonice *murdravit* at B. &c. it is not good, but if he had said, *Et sic modo & forma murdravit*, or *prædicto secundo die Maii*, it had been otherwise. H. P. C. 207.

1. The Name and Surname, and Addition of the Party indicted.

Cro. Eliz. 490.

Dyer 46. B.

2. The Year and Day.

If

If the Fact be laid on a Day to come, or as done at several Times, the Indictment will be quashed.

But 'tis not necessary to set down the very Day in which the Offence was done, so that 'tis before the Offence the Jury ought to find the true Day, because the Forfeiture relates to the Day found by the Verdict, and not to the Day in the Indictment.

Neither is it necessary that the Jury should find the Party guilty at that very Day laid in the Indictment, but to find the Fact as in Truth it is proved; and so it was done in Sir Henry Vane's Case. *Keil. 16.*

If after the Offence, yet if upon the Evidence the Jury thinks him guilty, they ought to find him so, because they are sworn *dicere veritatem. 3 Inst. 230.*

In Cases of Omission, viz. for not doing what we ought to do, 'tis not necessary to set down the Day and Year.

3. Place.

If the County is named in the Margent, 'tis well enough, but if no Town is named where the Fact was done, or any Place, and in Truth there is no such to be found, the Indictment is void. *9 H. 5. cap. 1. 18 H. 6. cap. 12.*

Dyer 69.

The Defendant was outlawed upon an Indictment for Murder, which was reversed, because it did not set forth, that *ex malitia sua premeditata* he committed the Murder, nor any Place where it was done, but only where the Assault was, and that may be in one Place, and the Murder in another.

Cro. Eliz.
436.

The Word *Hereford* was in the Margent, and the Indictment was, That R. G. de R. in Com. Radnor, *Generosus*, committed the Burglary at S. in Com. *predict.* and there being two Counties named before, it was uncertain to which the Words *Com. prad.* should refer, and therefore quashed.

Cro. Eliz.
606. 751.
1 Bulst. 203.

But the County must always be named in the Body of the Indictment, in Cases of Felony; but for any other Offence, 'tis sufficient in the Margent.

If a Stroak be in one County, and Death ensueth in another, the Indictment in the County where the Party died is good, by the Statute of 2 & 3 Ed. 6. cap. 24.

'Tis sufficient to lay the Fact to be committed in *Parochia*, tho' that is an Ecclesiastical Division and Place. *3 Mod. 158.*

Treasons, Felonies, Robberies, Murder, &c. done on the Seas, or beyond-Sea, may be tried in any Place appointed for that Purpose by the Queen's Commission. *H. P. C. 204. 35 H. 8. cap. 2.*

A Robbery in *Middlesex*, and the Thief is taken with the Goods in *Suffen*, he may be indicted for the Felony there; but for the Robbery, it must be in *Middlesex*.

Indictment.

363

If the Indictment is for taking away Goods of the Church, you must say, *Bona Parochianorum in custodia Guardianorum Ecclesie de H. &c.*

For Goods taken in the Life-time of a Man, who maketh an Executor, and dieth, it must be *de bonis Testatoris*; but if taken after his Death, then 'tis *Testatoris in custodia Executorum*.

The Inhabitants of a Parish, though no Person is particularly named, may be indicted for not repairing of an Highway. 2 Roll. Abr. 79.

If dead Things, to say, *Bona & catalla* generally is not good; but *Bona & catalla*, and then expressing the Names and Certainty thereof, is good.

If living Things, you must not say, *Bona & catalla*, but *Equum* or *Oves*, as the Case is.

An Indictment for Things *fera Natura*, as Hares, Partridges, &c. is not good unless taken in a Park or Warren.

Then as to the Value, if the Indictment is of living Things, and likewise of such which are sold by Weight or Measure, it must be said *pretii*, &c. and yet an Indictment for taking Fishes in a Pond was held good, without setting forth the Number or Value, against the Opinion of *Twisden*. 1 Lev. 203.

Of dead Things not going by Weight or Measure, it must be said, *ad valentiam*.

Now the Reason why the Value is to be expressed in Felony, is, That it may appear whether 'tis Petty-Larceny or not; and in Trespass, 'tis to aggravate the Offence.

Oppressor multorum Hominum, without shewing in what Manner, *communis Forestarius*, or *Latro*, or *Pacis Perturbator*, or that he is *mali Gestus*: These are all too general, and therefore not good.

But *communis Barattator*, and concluding *contra formam Statuti*, is good, because 'tis an Offence made by a Statute. 2 Roll. Abr. 79.

For an Escape of a Person taken on Suspicion of Felony, you must set forth what Felony, *H. P. C.* 206.

In Treason it must be *proditorie*, and conclude *contra ligam, sue debitum*; in Murder, *Murdravit*, which is *vocatum*, and implies Malice; in Burglary, *Burglariter*, and the breaking must be of a Mansion-house; in Rape, it must be *rapuit*; in Felony, *Felonice*, for *cepit & furatus* is not sufficient, but *cepit & abduxit* is well enough.

But in all these Cases, and in Trespasses, the Indictment must be *vi & armis*, and it must conclude *contra Pacem*.

But

4. Certainty of the Person.

5. Names and Value of the Thing taken away.

Value.

6. Nature of the Offence, and with what Weapon.

Indictment.

But in Forcible Entry, *vi & armis* is not requisite, because 'tis implied by *manu forti*, but you must conclude *contra pacem*.

If an Offence is created by a Statute, *contra formam Statuti in hujusmodi casu edit. & provis. &c.*

If Murder be laid to be committed with a Sword, you may give in Evidence any Weapon of the like Nature.

It will lie for a Conspiracy, without setting forth any Act done. 1 Lev. 62.

In all these Cases, if the Criminal pleads Not Guilty, and his Plea is recorded, yet he may withdraw it, and confess the Indictment, and then the Entry is, that *relictâ verificatione cognovit indictmentum*.

Where
after an
Acquittal
it will lie
for the
same Of-
fence.

Where
not.
Nor hold.

Hold.

Sid. 140.

2 Cro. 635.
Palm. 282.

Cro. Eliz.
108.

Cro. Eliz.
754.

Indict-
ments on
Statutes.

If the first Indictment was void for Insufficiency, as in *Payne's Case*, 5 Rep.

If the Trial was in a wrong County.

If the Indictment is good, though it supposeth the same Felony done in another Year, though by another Name, if known by both, though the Process was erroneous.

For false *Latin*, or for false or incongruous Words, as *viginti* for *viginti*, nor for the Omission of *Gladius*, *Baculus* & *Cultellus*, 38 H. 8. cap. 8.

Quashed for saying *ad generalem Session. pacis*, leaving out *Domini Regis*, 1 Levintz 175.

By insensible Words, as *Murdredum* for *Murdum*, because 'tis neither *Latin*, or a Word of Art.

By leaving out *contra formam Statuti*, where the Offence is created by an Act of Parliament, as Riot, &c.

It was *jurati & onerati dicunt*, omitting *super sacramenta sua*; and though it cannot be intended otherwise than upon Oath, because of the Word *jurati*, yet it was quashed.

Indictment was, *quod per sacramentum A. B.* and the rest of the Jury omitting *proborum & legalium hominum*, and quashed for this Omission.

It shall never be quashed for false *Latin*, if by any Intendment it can be made good.

And yet where two Men were indicted for that *felonica cepit*, this was held void.

For an Offence at Common Law which is *contra pacem*, an Indictment will lie at Sessions; so for Fraud or Deceit, as for selling deceitful Goods, or by false Weights and Measures; and though there are particular Statutes relating to this Matter, yet that doth not alter the Case, for the Difference is this, That where an Offence at Common Law is made, so like.

likewise by any Statute, and a Punishment appointed by that Statute, yet the Offender is indictable as it is an Offence at Common Law; but where a Statute creates a new Offence, and inflicts a Punishment, that must be pursued, and no other.

'Tis not safe to recite the Statute *verbatim*, or the Beginning, Continuance or End thereof, because any Misrecital will make the Indictment void, but you must set forth the Substance thereof, and the Offence; for tho' you conclude *contra formam Statuti*, that will not help, because those Words relate only to Circumstances, and not any Substance. *Dyer* 3. 12. 363.

And therefore where one was indicted for Usury, in taking more than 6 l. for the Loan of 100 l. and concluded *contra formam Statuti*, tho' it appeared plainly to be corrupt, yet because it was not expressly set forth that it was by corrupt Lending, the Indictment was quashed. *11 Rep.* 58.

If a Writ of Error is brought upon an Indictment, the Defendant must appear and put in Bail in Person; and therefore Sir William Read, who was 90 Years old, was brought in a Horse-Litter to the Hall, and upon Mens Shoulders to the Bar, to assign Errors.

2 Cro. 61. 6.

Indictment; Process thereon.

After an Indictment is found by the Jury for any Trespas upon a Penal Statute, if the Defendant doth not come in the next Sessions, a *Venire Facias* may be awarded in the Name of the Queen, directed to the Sheriff and Teste by the Justice: This is only for an Appearance, the Form is thus;

Process thereon.

Venire Facias.

Middl. ff. **ANNA** Dei Gratia, &c. Vic. Middlesex, salutem. *Præcipimus tibi quod non omittas propter aliquam libertatem in ballivâ tuâ quin venire facias J. O. de H. in Com. tuo, Labourer, coram J. P. Baronetto & G. G. Armigero, duobus Justiciariis nostris ad pacem in Com. præd. conservand. necnon ad diversas felonias transgressiones & alia malefacta in dicto Comitatu perpetrata. audiend. & terminand. assign. apud S. in Com. tuo * 30 die Julii proximo futur. ad respondend. nobis super quibusdam articulis super ipsum J. O. presentat. & habens ibi tunc hoc Præceptum. Teste J. O. Barone, apud S. 15 die Junii, &c.*

* The Day of the Sessions.

Indiament; Process thereon.

If the Sheriff return the Defendant summoned, and yet he doth not appear at the Return of the *Venire facias*, then you must sue forth a *Distingas* against him; the Form of which is,

Middl. ff. **ANNA** Dei Gratia, &c. Vic. Middlesex, salutem. *Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin in eam ingrediaris & distringas J. O. de H. in Com. tuo, Yeoman, per omnia terras & tenementa sua & quod de exitibus eorum respondeas, &c. ita quod habeas Corpus ejus coram custod. Pacis nostræ, &c. * ad respondend. &c. Teste, &c.*

* Ut prius.

And so a Distress infinite till Appearance.

But if the Sheriff return *nihil habet*, then you must sue forth a *Capias* against the Defendant; the Form whereof is,

Suffex ff. **ANNA**, &c. Vic. Suffex, salutem. *Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua quin in eam ingrediaris & capias J. O. de H. in Com. tuo, Yeoman, si inveni. fuerit in balliva tua & cum salvo custodias, ita quod habeas Corpus ejus coram custod. Pacis nostræ necnon Justiciariis nostris ad diversas felonias transgressiones & alia malefacta in eodem Com' tuo perpetrat. audiend. & terminand. assign. apud L. in Com. tuo, die Jovis* novo die Julii, proxim. futur. ad respondend. nobis de diversis transgressionibus contemptis & delictis de quibus indictatus existit & habeas ibi tunc hoc Breve. Teste J. P. & G. G. apud L. &c.*

* The Day of the Sessions.

If the Sheriff return *non est inventus*, &c. then you must have an *Alias*, and so a *Pluries*, and then an *Exigent*; the Form of which is,

Middl. ff. **ANNA**, &c. Vic. Middlesex, salutem. *Præcipimus tibi quod exigi facias J. O. de H. in Com. tuo, Yeoman, quousq; secundum legem & consuetudinem Regni nostri Angliæ utlagatur, si non comparuerit & si comparuerit tunc eum capias & salvo custod. ita quod habeas Corpus ejus coram Justiciariis Pacis nostræ necnon ad diversas felonias transgression. & al. malefacta in eodem Com' tuo perpetrat. audiend. & terminand. assign. ad general. Session. Pacis Com. tui prox. post festum Sancti Thomæ Martyris prox. futur. tenend. ubicunque in eodem Com' teneri contigerit ad respondend. nobis de diversis transgressionibus contempt. & offens. de quibus ipse indictatus est & habeas ibi tunc hoc Breve. Teste Carolo Com. D. apud L. primo die Maii, Anna Regni nostri primo.*

Return

Return thereof.

AD quem diem R. F. Mil. Vic. Com. prad' return. quod ad Com. suum tent. apud L. 4 die Julii, Anno Regni, &c. nunc infra-script. infra-script. A. B. primo & sic ad quatuor alios Com' tunc prox. sequen. ibidem tent. prad. A. B. quinto exact. fuit & non com-peruit. Ideo utlagatus fuit.

This Outlawry must be certified into the *Queen's-Bench*, because the Justices of Peace cannot award a *Capias utlagatum*.

But the Justices out of Sessions may award a *Superfedeas* to stay any of the Proceedings aforesaid, before the Outlawry is certified; the Form of which is,

Suffex ff. **A**NNA, &c. Vic. Suffex, salutem. Quia J. O. de H. venit coram custodibus Pacis nostra & Justiciariis nostris ad diversas felonias transgressiones & alia malefacta in Com. tuo perpetrata audiend. & terminand. assign. apud L. die Mercurii, &c. & invenit sufficiens securitatem pro comparantia sua ad preceptum general. Sessionem Pacis Com. S. prad. Ideo tibi precipimus quod prefat' J. O. de ulterius exigend. & utlagand. capiend. seu in aliquo modo motand. occasione quarundam transgression. contempt. & al. offens. unde indictatus est omnino Superfedeas & qualiter hoc preceptum nostrum fuerit execut. constare facias & Justiciariis pradict. apud L. prad. die Mercurii, &c. & habeas ibi tunc hoc Breve. Teste T. P. & G. G. &c. &c.

Traverse.

THis is the most solemn and ancient Way of trying the Fact: All Indiements may be traversed; that is, you may take Issue upon the Matter, or deny the chief Point in the Indiement.

This Traverse is to be tried by a Jury at the General Quarter Sessions, except in Riots and Foreible Entries.

By the Statute of 11 Will. the Clerk of the Peace shall have no more than 2 s. for drawing an Indiement, upon Pain to forfeit 5 l. to the Party grieved; if he draw it defective, shall make a new one without Fee, under the same Penalty.

Infant: See *Jeme-Covert*, and *Recognizance*.

Informa-

Information.

Several Laws have been made concerning Informers, upon penal Statutes. Of these, there are two Sorts :

First, the Attorney-General, and the Clerk of the Crown-Office, who are *honorarii & inform. propter Officii necessitatem*, though involuntarily.

The other are common Informers, who are likewise necessary, tho' my Lord Coke calls them *Turbidum Hominum genus*, and these are always voluntary.

Now as to these last Sort of Men, the Statutes do relate,

That every Informer shall exhibit his Information *in propria Persona*, or by Attorney.

That he shall not afterwards agree with the Offender without Leave of the Court; if he doth, and is convicted of it, he must stand in the Pillory two Hours in a Market adjoining, and forfeit 10 *l.* to the Queen and Party grieved.

That if he delay or discontinue his Suit, or be nonsuited, or if the Verdict pass for the Defendant, the other shall pay Costs.

These Matters, by the Statute of 18 *Eliz. cap. 5.* are inquireable by the Justices in their Sessions.

1 And. 116.

4 Leon. 55.

The Preamble of this Statute is for redressing Disorders *Common Informers*; and about 7 Years after it was made, One *Knivett* brought an Information on a Penal Law, and there was a Verdict for the Defendant; and the Question was, Whether the Informer should pay Costs, because (it was said) he was not a *Common Informer*, that being the first Prosecution he made. But it was answered, That the Preamble of the Act did not make the Law, but the enacting Part; and that it was general against *all Informers* on Penal Statutes.

* This Statute doth extend to common Informers, and not to the Party grieved.

Noy 71.

† Yet an Action of Debt upon a Penal Statute may be brought in *B. R.*

By the Statute of 31 *Eliz. cap. 5.* * no Man is to be an Informer who is disabled by any Misdemeanour: He must not lay the Offence in any other County, but where it was really done, except in *Champerty*, concealing Customs, Extortion, buying Titles, Forestalling, Ingrossing, Regrating, where the Penalty exceeds 20 *l.* which may be laid in any County.

But by the Statute † of 21 *Jas. cap. 4.* the Informer must make Oath, That the Offence was done in the County where the Information was exhibited (except in the Cases aforesaid) and within a Year before it was commenced, and if not proved to be done within the County, the Defendant shall be acquitted.

By 4 & 5 Will. & Mar. cap. 18. one Justice of the Peace of the Place where the Cause of the Information doth arise, may take a Recognizance of the Informer in the Penalty of 20*l.* to the Defendant, to prosecute with Effect, and to abide by such Order as the Court shall direct.

This Recognizance he must deliver to the Master of the Crown-Office, or otherwise he is not to file any Information, or issue any Process for Trespasses, Batteries, or other Misdemeanors, without Motion in open Court.

There must be an Entry made in the Office, and a *Memo-randum* thereof filed in some publick Place, that every Person may see the Recognizance without Fee.

If the Defendant appear and plead, and if the Informer doth not within a Year after Issue joined procure a Trial, or if the Defendant hath a Verdict, or the Informer procure a *Non Prof.* the Court shall award Costs to the Defendant, unless the Judge doth certify on Record that there was Cause for the Information; and if the Costs are not paid within three Months after they are taxed, then the Defendant shall have the Benefit of this Recognizance.

A Note must be made of the Day, Month and Year, of exhibiting the Information, and from that Time 'tis to be accounted a Record, and till then no Process shall be issued; and when that is done, the Name of the Prosecutor must be endorsed, and upon what Statute the Prosecution is made, and the Clerk doing contrary, forfeits 40*l.* to the Queen and the Party. 18 Eliz. cap. 5.

It must be exhibited within a Year after the Offence, but in Default of Prosecution, and where the Queen hath any Part, it may be commenced for that Part two Years after the first Year is expir'd. 31 Eliz. cap. 5. 4 Mod. 129.

If the Informer * die, the Attorney-General may proceed, and if a *Non Prof.* be obtained, the Informer may go on.

Penal Laws are *strict juris*, and therefore the Statutes of *Jewells* do not extend to them.

The Sessions cannot try an Information, unless they have a Jurisdiction by some Statute; but they are to proceed upon Indictments.

If Two Informations are exhibited against the same Person for the same Offence, and in one Court at the same Term, they are both void, because there is no Priority of Time to attach the Right more in one Informer than in the other; but if the Defendant pleads, That one Information was exhibited such a Day in the Term, and that before that Time, (*viz.*) on such a Day in the same Term, another Information was exhibited, and Judgment obtained, &c. this is a good Plea in Bar. *Hob.* 128. 2 *Levins* 141.

Concerning Informations.

Godb. 158.

* Release, or is non-suit.

Information.

Where any Part of the Forfeiture upon a Penal Law is given to the Informer, he must set it forth, and demand it in the Information, or 'tis void. *Hob. 245.*

The *Venire* was *praeceptum est*, and the Judgment *consideratum est*, and left out *per Curiam*, 'tis no good. *1 Levins 123.*

Raym. 192.

Where an Information is grounded on a Penal Statute, and it concludes *contra formam Statuti praedicti*, if that Statute is misrecited, the Information is wrong; but if 'tis concluded *contra formam Statuti in hujusmodi casu edit. & provis.* then it may be good; for the Court may take Notice of any good Act to punish the Offence.

Iron, See *Wooll*, and working thereon.

Inmates, See *Cottages*.

Judgment: In High-Treason;

IN all Cases (except Counterfeiting of Coin) that the Offender shall be drawn to the Gallows, and there hanged by the Neck and cut down alive, his Entrails taken out and burnt, his Head cut off, his Body quartered, and his Head and Quarters hanged up.

So 'tis for uttering such Money, knowing it to be so. *Cro. Car. 383.*

So 'tis for Clipping. *Dyer 230. B.*

But for Counterfeiting Money, 'tis to be drawn and hanged. In both Cases, the Judgment for a Woman is to be drawn and burnt.

Vent. 254.

Counterfeiting in this Case, is meant Counterfeiting by Coining, for that is esteemed an inferiour Sort of Treason, in respect to such which concerned the Person of the Queen; and if *Drawing and Hanging*, but without *Quartering*, is the Judgment for Coining, then by the same Reason it must be so for Clipping, for that seems a lesser Degree of the same Species of Treason.

In Petty-Treason:

For a Man, 'tis to be drawn and hanged,

For a Woman, drawn and burned,

In Felony:

The Offender is to be hanged till dead; and 'tis commonly said, That this cannot be altered to Beheading.

In

In Petty-Larceny :

To be whipt, and Forfeiture of Goods.

In Death by Chance-medly :

There is no exprefs Judgment, but the Goods are forfeited.

In Death *se defendendo* :

The like as in Chance-medly.

In Misprifion of Treason :

Forfeiture of Lands during Life, of Goods, and perpetual Imprifonment.

But the Goods of thefe Offenders are not to be feized before an Indictment found, or removed before Attainder.

Peculiar Punifhments are appoiated by divers Statutes for feveral Offences, and in fuch Cafes the Juftices cannot mitigate ; and therefore 'tis not warrantable to admit an Offender indicted on a Penal Law, to fubmit with a *Proteftation* of Not Guilty.

By a new Statute of 11 Will. 'tis Enacted, That they who ought to be burnt in the Hand by any Law now in being, fhall be burnt in the moft vifible Part of the left Cheek in open Court, neareft the Noſe.

As to what relates to Executions, 'tis uſually ſaid, That in Treafon, the Queen may remit all other Parts of the Sentence, except cutting off the Head ; but in Felonies, the Judgment muſt be executed in the Method preſcribed by Law ; and therefore, if in ſuch Caſe the Queen ſhould order a Criminal to be beheaded when the Judgment is to be hanged, it would be Murder in the Sheriff and his Officers, and they muſt ſuffer for it without a Pardon.

But this is a Miſtake ; for in the Reign of Ed. 6. the Duke of *Somerſet* was attainted in Parliament of Felony, and yet was beheaded, which is no Part of the Sentence. And in the Reign of Car. 1. the Lord *Audley* was condemned likewise for Felony, and by the Opinion of all the Judges the Execution was changed from Hanging to Beheading.

Jurors and Juries.

Who may
not be a
Juror.
6 & 7 Will.
1 Ann.

A Liens.
Apothecaries.
Attainted for any Crime.
Clergy-men.
Conspirators.
Indicted.
Infants under Fourteen Years.

There was formerly a great Inconveniency in returning of Jurors, for the Sheriffs would summon as many as they pleased; which was often done in great Numbers, to the Oppression of the People.

This was remedied by the Statute of *W. 2. cap. 38.* by which they were ordered to summon in one Assize Four and Twenty and no more.

But it hath been adjudged, That this Statute extends only to Jurors returned in Civil Cases, and not for Trials of Criminals, for in such Cases the Sheriff might be commanded by the Court to return as many as they please; and 'tis usual to return Sixty, because of the Challenges. *Keil. 16.*

7 & 8 Will. If there are not enough of the principal Pannel, the Sheriff must return the *Tales* out of some other Pannel of Jurors then attending; and if such *Tales-men* withdraw, the Judge may fine them.

Yorkshire being a large County, and many Persons therein qualified for Jurors; but that Service being forced on a few by the Corruption of Sheriffs, therefore a Clause was made in the Statute above-mentioned, prohibiting Persons to serve on Juries more than once in Four Years, except in the City and Town of *York* and *Hull*, and Counties of the said City and Town.

That at the Request of such Jurors, the Sheriff of *Yorkshire* shall register their Names at the End of every Assize and Sessions, and shall then give them a Certificate of their Attendance and Service.

That the Pannel returned for the Grand Enquest shall consist of Forty-eight Freeholders or Copyholders and no more, each having 80 *l* per Ann.

That at the Assizes there shall be Ten Pannels and no more of Petty-Jurors, consisting of Twenty-four Jurors in each Pannel, except where Special Jurors are directed.

That at the Sessions there shall be but Forty Persons returned to serve on the Grand Enquest, or any other Service.

Then

Then there is a Clause, that the Inhabitants of *Westminster* shall not serve in any Jury at the Sessions held for *Middlesex*.

Any Freeholder or Copyholder who is the Queen's Liege Subject, and returned by the proper Officer.

Who may be a Juror.

In *Michaelmas Sessions*, the Constable shall return to the Justices a List of the Names and Abodes of Persons who are qualified to serve, between 21 and 70 Years of Age, a Duplicate of which List the Justices shall order the Clerk of the Peace to deliver to the Sheriff before *January* following.

This List must be entred in a Book, and kept amongst the Records of the Sessions, and none to be impannelled whose Name is not entred in the List. 7 & 8 W. cap. 32.

And because the Constables, Headboroughs and Tythingmen were negligent in returning such Lists; therefore by another Act, the Justices every Year at *Midsummer Sessions* shall issue out their Warrants, at least under the Hands of Two of them, directed to the High-Constables of each Hundred, requiring them to issue out their Precepts to their respective Constables, Headboroughs, &c. that they should meet the High-Constable within Fourteen Days after the Date of such Precept at some convenient Place within the Hundred, then and there to prepare a List as aforesaid; which List they must sign, and at the *Michaelmas Sessions* following deliver into Court.

3 & 4 Annæ.

The High-Constable not issuing out such Precept to his Petty-Constable, or Headborough, forfeits 10 l.

The Petty-Constable or Headborough not meeting according to the Precept, and failing to prepare a List, and to return it as aforesaid, forfeits 5 l.

The Offenders are to be prosecuted at the Sessions, but there is no Direction how, or to whom the Forfeitures shall be applied.

Must be summoned at least Six Days before the Sessions, by shewing him a Warrant under the Seal of the Sheriff's Office.

How and when to be summoned.

But if not at Home, then a Note left by the Officer at the Dwelling-house with any Person inhabiting there, is sufficient.

If summoned otherwise than as aforesaid, the Sheriff forfeits 10 l. to the Party grieved, to be recovered in the Courts at *Westminster*.

None shall be returned but once in Four Years, the City of *York*, and Town of *Kingston upon Hull* excepted.

Inhabitants of Westminster shall not serve in a Jury at the Sessions in Middlesex.

Grand
Enquest.

Must consist of Forty-eight Freeholders or Copyholders, and no more, each having 80 *l. per Annum*.

There shall not be above Forty Persons returned at the Sessions of the Peace for Yorkshire. 7 & 8 W. cap. 32.

They may be more than Twelve, and 'tis best to have an odd Number; and if Twelve agree, 'tis conclusive to the rest.

They ought not to have a Keeper, nor to be without Victuals, but may be adjourned to give their Verdict.

If they discover their Secrets, they may be fined; and if they make a favourable Presentment, they may be committed, and fined.

Moor 302.

A Juror was indicted, for that he was *communis Publicator Secretorum Domine Reginae & sui ipsius & diversorum aliorum Personarum cum ipso impanellat. &c. & contra Juramentum suum in ea parte prestavit*. It was objected, That this Offence did not lay in *Communism*, no more than *communis Forestallator*, without shewing particularly in what; besides, it was not alledged, that he was sworn to keep the Secrets, nor that what he discovered concerned his Oath.

If one of the Number is outlawed, or returned at the Nomination of another, it makes the whole Indictment void.

Justices of Peace may make an Alteration in the Pannel after 'tis returned, if they see Cause, and may remove a Juror after he is sworn. 3 H. 8. cap. 12.

Regularly they cannot enquire into any Thing but what ariseth in the County for which they are returned; and therefore if a Stroke be given in one County, and the Death happen in another, the Party could not be indicted where the Person died; but this is now remedied by the Statute of 2 & 3 Ed. 6. cap. 24.

So likewise the Law in Criminal Cases is now altered by other Statutes, as in Confederacies, Felonies, Murders, Robberies and Treasons done on the Sea; the Offender shall be tried where the Queen, by her Commission, shall appoint. 28 H. 8. cap. 15.

So in Treasons and Misprisions of Treasons done out of the Land, the Offenders shall be tried in the Queen's Bench by a Middlesex Jury, or by the Queen's Commission in any County by a Jury of that County. 35 H. 8. cap. 2.

If the Grand Enquest conceal any Thing which they ought to present, the Justices of Peace may impannel an Enquest to enquire of such Concealment, and fine them. 3 H. 7. cap. 1.

They

They may be punished by a Judgment in Attaint, if they give a false Verdict in any Court of Record, either in a Real or Personal Action where the Debt or Damages is above 40 s. but no more Witnesses must be produced to the Jury which is to try the Attaint, than what gave Evidence to the first Jury; and if it should appear, that the first Jury had a plain and positive Proof before them, tho' false, yet the Jury which tries the Attaint is not to consider that Fal- sity, but what they would have done themselves if they had been on the first Jury.

Any Person who is injured by a false Verdict, may have a Writ of Attaint against the Jury, unless where the Queen alone is a Party against a Subject, and the Jury find for her, tho' falsely, yet no Attaint lies in such Case; but 'tis other- wise where the Suit is *tam pro Domina Regi quam pro se- ipse*.

But this way of punishing a Jury is seldom used, except where the Corruption is very apparent.

Cannot be fined for giving a Verdict contrary to Evidence where an Attaint lies against them. Nor indeed where it doth not lie; because 'tis impossible for the Judge to know the Fact as the Jury may, for the Judge knows it no other- wise but by the Evidence given in Court; but the Jury are supposed to know it by other Methods.

By being returned of the Vicinage, by their own personal Knowledge by knowing the Witnesses to be Persons of no Credit.

So that if the Judge cannot have so much Evidence of the Fact as the Jury may, they cannot go against his Direction in Law; because where the Fact is not agreed, he cannot direct what is Law. *Vough. 147.*

If a Jury-man will keep his Fellows without giving any Reason, or will withdraw from them, he may be commit- ted and fined, because he is sworn well and truly to try the Issue; and therefore to be obstinate without Cause, or depart, is a Misdemeanour.

But if he differs in Judgment from the rest, tho' his Dis- sent be not as reasonable as the Opinion of those who agree, yet he cannot be fined, tho' he keep the rest for a Time from giving their Verdict.

For Misdemeanours they may be fined, but not barely for going against the Direction of the Court.

So in *Bayne's Case*, where the Jury agreed of two Verdicts, intending to conceal one, if the Court should be satisfied with the other. *Cro. Eliz. 778.*

In *Wharton's Case*, they were not fined for giving their Ver- dict against the Direction of the Court only, but the Judges

Dyer 53.

4 Leon. 46.

Jurp bow
to be pu-
nished,
and for
wbat.
March 81.
3 Leon. 207.

were of Opinion, That some unlawful Practices had been used to procure that Verdict. *Nlv. 23. Noy.*

So in *Wagstaff's Case*, the Jury were fined and committed, and upon a *Habeas Corpus* brought, they were not bailed; but it must be for some Misdemeanour, and not for refusing to find according to their Evidence, because they were not fined equally. *Hardres 409.*

So if they cast Lots whether to find for the one or the other, 'tis a Misdemeanour. *2 Levins 140, 205.*

In Cases of Life or Member, if they cannot agree of their Verdict at the Assizes, they must be carried the Circuit, till they do agree. *1 Vent. 97.*

1 Leon. 133.
Dyer 137.

If they eat and drink before or after they are agreed of their Verdict, they are to be fined; only with this Difference, That if they eat at their own Charge, the Verdict shall stand; but if at the Charge of the Party, it shall be set aside.

Moor 599.

Some of them have been fined for having Figs and Pippins in their Pockets, tho' they did not eat them. *1 Leon. 133.*

Cro. Eliz.
189,

If after they are gone from the Bar, one of the Jury calls a Witness, who was sworn, and had given his Evidence in Court, and desires him to repeat it again, which he did; this is a Misdemeanour, and the Verdict shall be set aside.

Moor 882.

An Attorney was turned over the Bar, for giving Direction to the Sheriff what Persons he would have returned of a Jury.

Chal-
lenge of
no free-
hold.

It hath been held, That no Freehold was not a good Challenge to a Juror at Common Law.

That if such a Challenge was good, yet not in Treason; and if it should be admitted to be good in Treason, it must be where the Trial is in a County at large, and not in a City and County; and if in a City, yet not in *London*.

But there is no Resolution, that this is a good Challenge at Common Law in any Capital Matter; 'tis a good Challenge in Civil Affairs, and no Reason can be shewed why not in Criminal.

'Tis no Objection to say, That the *Venire Facias* mentioned no Freehold before the Statute of 35 H. 8. cap. 6. for tho' this be true, yet it always expressed, that the Jurors should be *probi & legales homines*; which Words import they must be Freeholders, because *legales* implies, they must be qualified by Law; and *homines* shews who are meant, (*viz.*) Freeholders; for *homines de Comitatu* are Freeholders of the County, and no other Men are considered in Point of Truſt.

The Justices Precept to the Sheriff to return a Jury.

ANNA, &c. Vic' Suffex Salutem. Præcipimus tibi quod non omittas propter aliquam Libertatem Com' tui quin venire fac' coram Justiciariis nostris ad Pacem in Com' præd' conservand' assign. apud L. in Com' prædict' 8 die Julii prox' sequen' 24 probos & legales homines de Hundred' de L. ad audiend' & faciend' ea quæ ex parte nostra adtunc & ibidem illis fuerit injungend' & habeas tunc ibidem hoc Mandatum. Teste T. P. Baronetto, apud L. tali die, &c.

Justice of Peace.

'TIS agreed by all Writers on this Subject, That there were *Conservators of the Peace* at Common Law; but there are several Opinions concerning the Original of Justices of the Peace.

Polydore Virgil tells us, That they began under *William* the Conqueror; and my Lord *Coke* says, That in *Easter-Term*, 6 Ed. 1. *prima fuit institutio Justiciariorum pro Pace conservanda*. Mr. *Prynne* animadverting upon him, shews that H. 3. after the Agreement made between him and the Barons, did constitute Guardians *ad Pacem conservandam*. But the Learned Sir *Henry Spelman* was of a contrary Opinion, viz. That they were made by Ed. 3. in the beginning of his Reign, on purpose to suppress Commotions which might happen upon the dethroning Ed. 2. and being appointed by the King's Commission in every County to keep the Peace, they were therefore called *Custodes & Guardiani Pacis*.

1 Ed. 3. c. 16.

The Number of these Magistrates at first was very incertain, till at a Parliament held 21 Ed. 3. the Commons being charged to advise the King how the Peace of the Land might be better kept; their Advice was, That in every County Six Persons should have Power by Commission to hear and determine Matters relating to the Peace; of which Number Two should be of the best Quality, Two Knights, and Two Men of the Law, and that they sit Four Times in a Year. *Cott. Abridg.* 67, 86.

4 Ed. 3. c. 2.
34 Ed. 3. c. 1.

Neither do I find that they had any Judicial Authority at first, but afterwards they were enabled by particular Statutes to hear and determine Felonies and Trespasses.

And for this Reason, Two Years afterwards they were by another Statute called Justices of the Peace, which Name continues to this Day.

36 Ed. 3.
c. 12.

But

Number.

But in the Space of Threescore Years their Number so encreased, that *Ann. 12 R. 2. cap. 10.* a Law was made, prohibiting, that there should be more than Six in every County, as at the Beginning of their Constitution; and this Number Two Years afterward encreased to Eight.

They are now Judges of Record, and have a larger Power than the Conservators had, because they could not commit the Offenders for a Breach of the Peace; but the Justices may send Warrants to bring Delinquents before them to be examined, and may also commit where they see Cause.

This Law is not abrogated at this Day, but the Number of Justices is greatly encreased in every County, which made Mr. *Lambard*, above One hundred Years since, complain of the excessive Number; and after him Sir *Henry Spelman* takes notice, that there are above Threescore in each County.

'Tis true, in *Wales* there were but Eight in a County; they were confined to that Number by a Clause in the Statute of 34 & 35 H. 8. but by a late Act of 5 Will. & Mar. that Clause is repealed.

'Tis this which made a late Author liken them to the Order of St. *Michael* in *France*, which at the Institution was desired by Men of the first Quality, there being only Thirty-six in Number, but in a few Years so encreased, that it was despised by Men of Honour, and bestowed only upon mean Persons.

So this Court of Justices of Peace, which was once, as my Lord *Coke* observes, such a Form of subordinate Government for the Quiet of the Realm, that if duly executed, no Part of the Christian World had the like, hath been composed of such an unsuitable Mixture of Men, that 'tis become a Subject in Plays, and a Character in Comedies.

Therefore this Author would have the Number reduced to the old Standard, viz. That in each County there should be Eight Honorary Justices constituted of Men of the best Quality therein, who should not be obliged constantly to attend the Service any farther than their Zeal for Justice, and Love for their Country, shall incline them; and Eight acting Justices who should be fit for Business, who should constantly apply themselves to this Attendance, be entitled to a Reward for their Pains, and be subject to Penalties upon any Neglect, without a reasonable Excuse; and that without Five, no Sessions should be held.

Cott. Abr.
fol. 15, 93.
Wages.
12 R. 2. c. 10.
19 H. 7.
5 Eliz. c. 4.

Among the Petitions made at a Parliament held at *Tork*, 8 Ed. 3. this was one, (viz.) That all Justices of the Peace were to have certain Fees for their Attendance; the Petition was again renewed 36 Ed. 3. and the King answered, He would provide therefore; but what that Fee was, doth not

not appear. *Hill. 12 R. 2.* it was Enacted, That they should have 4 s. *per Diem* for every Day they sit in Quarter-Sessions; and since, by particular Statutes, they are to have also Part of the Forfeitures upon Conviction of Offenders against these Laws; and by the Statute of Labourers, they are to have 5 s. *per Diem* for every Day they shall sit in Execution of that Act above three Days.

And such Care was then taken to reward those Magistrates, that it was provided by a Statute, *Anno 14 R. 2.* that the Names of the Justices, and the Days of their Sitting, should be written in the Indentures of Estreats of every Sessions, one Part whereof was to remain with the Sheriff, that he might know to whom the Wages should be paid; and the other with the Barons of the *Exchequer*, that the Sheriff might have Allowance made, &c. in passing his Accompts; and if he neglected or refused to pay the Wages allowed by Law, an Action of Debt would lie against him.

Their Qualifications are described by several Statutes, viz.

They must be Men of the best Reputation, the most prevalent Men in the County, as they were formerly called, together with some Lawyers; they must be substantial Persons, dwelling also in the County; they must be Men of good Governance, and must not be Steward to any Lord, or desire this Office; and they are not qualified unless they have 20 l. *per Annum*, except Men of the Law.

And therefore an Indictment was brought against One, because he acted as a Justice of Peace, not having 20 l. *per Annum*, *contra Pacem*, &c. but the Indictment was quashed, because the Time of his Acting was not laid, &c. for he might have 20 l. *per Annum* then, though not afterwards. *Roll. Rep. 2 Pars 247.*

In some Cases 'tis Ministerial, (*viz.*) On a *Supplicavit* out of B. R. for taking Surety of the Peace, on the Statute of *Northampton* for a Forcible Entry, and on a *Certiorari*.

But in most other Cases relating to his Offices, he is a Judge of Record, for none but such can take a Recognizance for the Peace.

By the Statute of 18 Ed. 3. cap. 2. he hath Power to hear and determine * *Felonies* and Trespasses, and to inflict Punishment, &c. He hath the like Power by 34 Ed. 3. cap. 1. and likewise by R. 2. cap. 10. he hath Power to proceed to the Deliverance of Thieves and Felons.

Now tho' these Statutes do enlarge their Power, yet because by a subsequent Law, (*viz.*) 1 & 2 Phil. & Mar. cap. 13. they are to certify the Examinations in Homicide and Felony to the Justices of Gaol-delivery, therefore the Sessions do

How qualified.

18 Ed. 3. 2.
34 Ed. 3. 1.
2 H. 5. 4.
18 H. 6. 11.
12 R. 2. 10.

Of his Power in General.

* And therefore had Power to inquire of Murder, because 'tis Felony.
Dyer 69. 2.

do not proceed to determine great Felonies; but for Petit-Larceny, and other small Felonies, they usually try Offenders, or they may proceed in any Case where a Felony is by any Statute limited to be heard before them.

And generally in all Cases they may take the Examinations, and commit the Offenders, and bind over the Prosecutors to the Assizes, and certify their Proceedings.

2 Roll. Rep.
78.

Where he hath a Jurisdiction, his Warrant is not to be disputed by any Constable, who may be indicted for not executing it.

In some Cases, as in *Force, Riots, Presentments of High-ways*, his single Testimony is of greater Authority than an Indictment of a Jury.

But in his own Case he is not Judge, and ought not to execute his Office, unless he is assaulted, and then he may commit the Offender; he may likewise record a Forcible Entry upon his own Possession.

He shall not be punished for any Thing done by him in Sessions as a Judge.

When he justifieth the Fact done by him as a Justice of Peace, he need not set forth his Commission, because he is a Judge of Record, and his Commission remaineth with the *Custos Rotulorum*.

If any Man abuseth him, an Indictment will lie against the Offender.

Sid. 144.

That is, if the Abuse be in any Thing relating to his Office; as where an Order was affirmed upon an Appeal, and the Party in Anger said, *If I cannot have Justice here, I will have it elsewhere*; he was indicted for this Contempt, and fined by the Justices 5 *l.* and committed for Non-payment; and this was held lawful. 'Tis true, Justice *Twisden* was of a contrary Opinion, *viz.* That the Words were not spoken in Contempt, but by way of Appeal to another Court, and did not accuse the Sessions of Injustice; but this is a strained Construction of a plain Sentence.

And as they are favoured by the Law in the Execution of their Office, so they are punished for any Irregularities.

Sid. 192.

As for Instance: An Information was brought against a Justice of Peace for compounding Recognizances, and not returning them to the Sessions; and for taking 20 *s.* for every unlicensed Alehouse, and converting it to his own Use, he was fined 1000 Marks, and imprisoned during the Queen's Pleasure, was to find Sureties for his Good Behaviour for a Year, and to acknowledge his Offence at the next Assizes.

Noy 103.

But he may perswade an Agreement between the Parties for small Trespases, but not where the Queen is to have a Fine.

Justice of Peace.

381

He may send his Warrant to apprehend any Person accused of Felony, though the *Accusation* should be false, but not unless accused.

1 Leon. 187.
Cro. Eliz.
130.

One Justice, &c. cannot commit another for a Breach of the Peace; the Sessions may.

They cannot hold Cognizance of Pleas upon Penal Statutes without an express Power given to them by those Acts; and without such Authority, the Indictment, if taken, will be void.

By the Death of the Queen, by a Discharge under the Great Seal, by a *Superfedeas*, by granting a new Commission; by Accession of another Office, as being made Sheriff or Coroner.

How his
Power is
determin-
ed.

Beets : See Coals.

Larceny Petty.

TIS a Felonious taking and carrying away the Personal Goods of another, not from his Person, nor out of his House, and not exceeding the Value of 12 d.

In this Definition, these Things are to considered :

1. Who may be guilty of this Offence.
2. What shall be accounted a Felonious Taking, and where.
3. What shall be a Carrying away.
4. What are the Personal Goods of another, and what not.
5. The Value.

As to the First, Infants under Fourteen, and married Women, may be guilty, &c. but if a *Feme-Covert* taketh the Goods of the Husband, and delivereth them to another, 'tis not Felony in the Receiver.

Who may
be guilty.

'Tis likewise an Excuse to her, if she commit Felony by the Command of her Husband, if both are in the same Felonious Act; but 'tis no Excuse in a Servant by the Order of his Master.

There must be an actual Taking, and therefore the Indictment is always *quod Felonice cepit & asportavit* or *abduxit*; for if it be *quod abduxit* only, 'tis naught; and therefore if Goods are found, and afterwards converted *animo furandi*, 'tis not Felony.

What is a
felonious
Taking,
&c.

If

If a Man hath the Possession of Goods by Delivery, as a Carrier, who imbezels them, 'tis no Felony, unless the Privy be determined; that is, if by Agreement the Goods were to be carried to such a Place, which he doth not; or if they are brought thither, and afterwards the Carrier takes them, *animo furandi*.

Raym. 275.

But in some Cases, tho' the Party hath the Goods by Delivery, yet 'tis Felony to go away with them; as if a Shop-keeper delivers Goods to a Person, pretending to buy them, and he runneth away with them, 'tis Felony, for the Goods were not properly out of the Possession of the Owner by his Delivery, but by completing the Contract which was then began; and the running away shews the Intention of the Party, by coming into the Shop (*viz.*) to get the Goods into his Possession, *animo furandi*.

But Felony may be committed by a Person who hath the Charge or Use of a Thing, as a Shepherd of his Sheep; or a Guest, of Plate brought for his Use in an Inn.

It may be committed by making use of the *Process* of the Law to obtain Goods, *viz.* By obtaining a *Replevin* where a Man hath no Property, and by that Means get a Horse delivered to him, this is a Felonious Taking; so by getting Goods out of an House upon an Ejectment, where he hath no Title. *Sid.* 254.

What is a Carrying away.

A Guest removes Goods out of his Chamber, and is taken before he gets out of the Inn; or taking an Horse with an Intent to steal, but is apprehended before he can get out of the Ground where he was departing.

What are the Personal Goods.

A Man who hath a Property only *pro tempore*, as a Bailiff, if Goods are taken away from him, 'tis Felony.

Stealing a Bond is Felony, because 'tis a Thing in Action.

Taking Fish in a Trunk or Pond, is Felony, because they are deprived in these Places of their natural Liberty; so taking Swans kept in a Pond or private River.

Things which have been *feræ Naturæ*, if made tame, are Personal Goods; as Conies, Deer, Partridges, Pheasants, and 'tis Felony to steal them, knowing them to be the same.

So where a Man hath a Property, *ratione impotentie*, in Things which are wild in their Nature, as young Hawks, or Pidgeons in their Nests, 'tis Felony to steal them.

So 'tis to take Things which are *domitæ Naturæ*; as Ducks, Hens, Turkeys, &c. Horses, Coks, &c.

To steal the Shroud of a Person buried is Felony, for 'tis *bona Executorum*: *Quere.*

Wrecks;

Wrecks, Waifs, and Estrays before Seifure, Fish in a River, Conies in a Warren, for a Man hath no Property in them but *ratione loci*.

Corn or Grass growing, Apples growing, taking Lead off a Church.

Things of a base Nature, as Dogs, Foxes, Monkeys, Par-rats, Ferrets; these and such-like are not Personal Goods, and so no Felony to take them.

If the Indictment be for taking Goods to the Value of 10 s. and the Jury find only to the Value of 10 d. 'tis Petty-Larceny.

If several small Matters are taken from the same Person at several Times, and all amounting to more than 12 d. they may be put into one Indictment, and the Offender, being found guilty, shall have Judgment of Death.

The Judgment in this Offence is to be whipped, and forfeits his Goods.

A Wife stealing by Compulsion of her Husband, otherwise if not constrain'd; but if she commit Murder by her Husband's Consent, 'tis Felony.

They steal Goods together, 'tis Felony in the Husband alone; but if she steal her Husband's Goods, or receive him being a Felon, she is not guilty as a Felon in the one Case, or as Accessary in the other.

What not the Value of 12 d. or under.

Who are not felons.

Leather.

THE Statute which chiefly concerns the ordering of Leather, was made *Anno 1 Jac. 1. cap. 22.* which may be divided into these Particulars:

| | | | |
|------------|---|------------------|---------------------|
| Concerning | { | Bark, | Shoemaker, |
| | | Hides, | Searchers, &c. |
| | | Tanner, | Sealers of Leather, |
| | | Currier, | Triers, |
| | | Leather tanned, | Forfeitures, |
| | | Leather curried, | Exportation. |

This must not be engrossed, the Forfeiture is double the Value.

* Oak-Trees, fit for Barking when the Bark is worth a s. per Cart-Load, must not be sold but between the First of April and last of June, except for necessary Repairs of Houses,

Mills

* Eliz. c. 8.
Repealed
by 1 Jac.
cap. 22.
1 Leon. 104.

Mills or Ships; Forfeiture (*viz.*) the Trees, or double the Value.

Hides.

Gashed by the Currier in shaving, Forfeiture to the Party grieved twice as much as the Loss.

Spoiled or impaired, forfeits 6 s. 8 d. and the Value of the Hide or Skin.

Gashed by the Tanner, forfeits 20 d. per Hide.

Watered, except in *June, July* and *August*, forfeits 3 s. 4 d. per Hide.

Put to Sale, being putrified, like Forfeiture.

Must not be bought rough in the Hair, except by Tanners, (other than Salt Hides for the Use of Ships) forfeits the Hides, or the just Value.

Tanned Leather must not be bought but in Fairs and Markets, forfeits 6 s. 8 d. per Hide.

Tanner.

Must serve seven Years Apprentice, or be a hired Servant to the Trade, or must be a Widow, or Children of a Tanner having a Tan-Fat left them, and been brought up in the Trade for four Years: Forfeiture is all the Leather tanned, or Value thereof.

He must not over-lime Hides, or use any Thing but the Bark of Ash or Oak, Culver-Dung or Hen-Dung, Lime, Malt, Meal, Tapwort: Forfeiture is every Hide otherwise tanned and put to Sale, or the Value thereof.

Suffering Hides to be frozen, or to be parched with Fire or Sun, like Forfeiture.

Tanning rotten Hides, not continuing Sole-Leather twelve Months in the Woozes, and Upper-Leather nine Months, or negligent working Hides in Wooze and not renewing and strengthning them, forfeits every Hide so tanned and put to Sale, or full Value thereof.

Raising Hides for Sole-Leather by any Mixtures, forfeits the same.

Must not hasten the Tanning by unkind Heats with hot Wooze, forfeits 10 l. and stand in the Pillory three Days in next Market-Town.

Currier.

Must not curry a Hide or Skin which is not well tanned and dried in his own House, situate in some Market or Corporate Town, and not elsewhere.

Must not use the Trade of a Tanner, Butcher or Shoemaker, or any other Artificer, who uses cutting Leather, forfeits for every Hide 6 s. and 8 d.

Refusing to curry Leather within eight Days in Summer, and sixteen Days in Winter, after he shall may take it in Hand, forfeits for every Hide not-curried 1 or

War.

Warden of the Company, or Officer by him appointed, shall within one Day after Request, search and seal curried Leather, for which the Currier is to pay 1 d. per Dicker; the same for six Dozen of Calves-Skins; he forfeits for every Hide not sealed and searched 6 s. 8 d.

A Cutrier in *London*, not currying Leather well, forfeits the Value; a Currier buying tanned Leather and currying it, and selling it to Shoemakers not cut out and made into Wares, is punishable. 1 Cr. 425.

Being unwrought, shall not be bought but by those who make it into Wares; but Artificers may buy it every *Monday* in *Lendenhall* Market, being first searched, sealed and registered. Leather tanned.

An Information was brought upon this Paragraph, of the Statute against a Currier, for buying and selling tanned Leather not made into Wares; and it was found, that he bought Hides which were tanned, and that he shaved, coloured and glazed the Leather, and sold it; and this was held to be within the Statute, because this Operation was not a making it into Wares.

Jones 463.

Red and unwrought shall not be sold but in Markets, &c. unless sealed and searched in some Market before, nor shall any Leather be exposed to Sale before sealed and searched: Forfeiture 6 s. 8 d. per Hide, and for a Dozen of Sheep or Calves-Skins 3 s. 4 d. besides the Hides and Skins, or full Value.

Not sufficiently dried and tanned and put to Sale, forfeits the Whole.

Red Leather brought within the Jurisdiction of *London*, must be carried to *Lendenhall*, and there searched; being sold before 'tis searched forfeits the same, or the Value thereof.

Red and unwrought must not be bought and sold before 'tis registered, forfeits the Value.

Leather shall not be put to be curried by any Artificer in *London*, or three Miles thereof, but to some Person free of the Company of Curriers in *London*, forfeits the same, or Value thereof. Leather tutried.

Curried Leather must be searched and sealed within the Jurisdiction of *London*, and three Miles thereof, before 'tis used, forfeits 6 s. 8 d. per Hide, besides the Value of each Hide.

Must make Boots and Shoes of good Leather, sew them well, and not sell them on *Sundays*, forfeits for every Offence 3 s. 4 d. and the full Value of the Wares sold. Shoe-maker.

Masters and Wardens of

Curriers,
Girdlers,
Sadlers,
Shoemakers,

Search-
ers and
Sealers.

Within the Jurisdiction of London, must once a Quarter search and view all Wares made by Persons of their respective Professions, and which are made of tanned Leather, or they forfeit 4 . per Year for every Years Default; to be divided between the Queen and Prosecutor.

They may seize insufficient Wares until tried.

Mayor and Aldermen of London must every Year chuse and swear eight expert Men, out of some of those four Companies, to be Searchers and Sealers of tanned Leather there, or forfeit 40 s. per Ann. to be employed as above-written.

Searchers, &c. refusing to do their Office, or to allow Wares which are really good, forfeit 40 s.

Exacting more than due Fees, forfeit 20 s.

Lawfully chosen, and refusing the Office, forfeit 10 l.

Opposing Searchers and Sealers in Execution of their Office, forfeit 5 l.

Information against a Person not being a Tanner, for buying raw Hides, and selling them again not tanned.

Sussex ff. **M** Emorand. quod, &c. venit T. H. &c. & dat. Cu-
ria hic intelligi & informari quod quidam R. R.
de L. in Com. prad. Sutor 17 die Maii, ult. prateris. ante exhibi-
tionem huius informationis apud L. prad. in Com. prad. emebat de
diversis Personis quarum nomina prafat. T. H. qui tam, &c. incog-
nita sunt viginti pelles hirsutae, (Anglice, rough Hides) precii cu-
juslibet pellis inde 6 s. 8 d. prafat. R. R. adtunc non existen. coria-
tor vel Persona quae licite potuit pelles prad. depseri quae quidem
pelles non fuer. falsae pro usu necessario narium contra formam Statut.
in huiusmodi casu edis. & provis. per quod prad. R. R. forisfecit.
&c. legalia moneta, viz. valorem prad. pellium unde prad. T. H.
tunc pro eadem Domina Regina quam pro seipso pet. advisamentum
Curiae in praemissis quodque forisfactura prad. in tres equales partes
dividatur juxta formam Statut. prad. ac quod ipse idem T. qui
tam, &c. unam partem inde habere valeat juxta formam Statut.
prad.

Infor-

Information against One for buying tanned Leather, and not making it into Wares.

Suffex ff. **M**emorandum quod, &c. venit T. H. qui tam, &c. & dat' Curia hic intelligi & informari quod quidam T. P. de L. in Com' prad' Sutor 17 die Maii, &c. apud L. prad' in Com' prad' emebat de quodam T. R. decem terga coriata, (Anglice, Backs of tanned Leather) pretii cuiuslibet tergi indit 5 s. & quod prad' T. P. eodem 17 die Maii, apud L. prad' in Com' prad' exposuit, (Anglice, did put away) prad' terga coriata non operas & conversa in mercimoni' facta, (Anglice, into made Wares) contra formam Statut' in huiusmodi casu edit' & provis' per quod (prout antea.)

Information against a Tanner, for exposing tanned Leather red, and unwrought, to Sale not in a Fair or Market.

Suffex ff. **M**emorandum quod &c. venit T. H. qui tam, &c. & dat' Curia hic intelligi & informari quod R. R. de L. in Com' prad' coriator primo die Junii, ult' preterit' & diversis aliis diebus ante exhibitionem huius informationis apud L. prad' in Com' prad' venditioni exposuit & vendi & exponi causavit eisdem G. E. de H. &c. & diversis aliis Personis prefat' T. qui tam, &c. adhuc integris quinque pelles coriatae rubrae & meluberrae (Anglice, unwrought) quae quidem pelles non fuer' per prefat' R. R. autem & ibidem venditioni exposuit in aliquo aperto nundino (Anglice, Fair or Market) nec ante eum fuer' scrutas & sigillas in aliquo nundino (Anglice, Fair or Market) contra formam Statut' in huiusmodi casu edit' & provis' unde prad' T. qui tam, &c. per aduocatum Curia in premissis ac, &c.

They must Register tanned Leather sold in Markets, &c. with the Prices thereof, and the Names of Buyer and Seller, taking of each 2 d. for 10 Hides, and 2 d. for every 6 Dozen of Calves or Sheeps-Skins.

There are six Persons in London, appointed by the Lord Triers: Mayor, &c. and in other Places by the chief Officer upon Oath, within 15 Days after Seizure, &c.

Persons not appointing, and Triers neglecting their Duties, forfeit 5 l. for every Default.

Four of the Triers in London shall be removed every Year, and others put in their Room; and none shall be in that Office above two Years, and afterwards shall not be chosen again within three Years; forfeiture for every Month otherwise continuing in the Office 10 l.

Exporta-
tion.

Forfeitures,
how to be
divided.

By this Act, Exportation was prohibited; but by 20 *Car. 2. cap. 5.* it was made lawful, paying for every Hundred Weight 12 *d.* which Act was revived by 1 *W. & M.*

The Money forfeited, by 1 *Jac.* must be divided into three Parts, viz. between the Queen, Prosecutor, and Corporation, or Lord of Liberty.

The Value of the Wares, if within the Jurisdiction of London, into three Parts, viz. between the Seisor, Chamber of London, and Poor; and in all other Places, between the Seisor, Head Officer, and to charitable Uses.

Justices of Peace have Power to hear and determine Offences against that Act.

Leet.

Before the
Conquest.

This is a Court of Record, and derived out of the Sheriff's Turn, for the Ease of the People, that Justice might be administred near their own Doors. It was therefore granted by the King to particular Lords, who at first were to view the Tenants and Resiants at certain Times in their Manors; and from hence 'tis called, *Curia visus franci plagii*, which Name it retains to this Day.

Now this Court being instituted for the Ease of the Tenants within a particular District, and that they might be at no Charge or Loss of Time to travel to the Sheriff's Turn; therefore it seemed reasonable, that something should be paid by them towards the Charge of obtaining the Leet; and from hence came the Duty to the Lord *de certo Lete*.

Before the Institution of a Leet, every Freeman, when he was 12 Years old, was bound to take the Oath of Allegiance in the Turn; and after the Leet was established, then he was bound to take it within that particular Precinct, and if he could not then find Pledges for his Truth to the King and the People, he was to be committed till he could.

These Pledges or Free Pledges consisted of ten Families, the Masters whereof were bound for one another and their Families, that each Person therein should stand to the Law; and if he was not to be found, that then they should answer for any Injury he had done.

And these were the Pledges the Lord or his Steward were to view in the Leet, which comprehended those ten Families and no more; but afterwards the Authority of the Leet was enlarged by many Statutes.

Steward thereof cannot grant Surety of the Peace, unless by Prescription; but he may commit those who make an Affray

Affray before him in the Execution of his Office, or bind them to the Peace or good Behaviour.

He may take a Presentment of an Offence against the Peace.

In every Leet there ought to be a Pillory and Tumbrel, or the Lord of the Leet shall be fined to the Queen.

Steward ought to give the Statute of 1 *Elix. cap. 17.* concerning Fish in Charge, or forfeit 40 s. between the Queen and Prosecutor.

He cannot *Amerce* for any Thing but publick *Nuisances*, not for particular Trespass either against the Lord or any other Person, for if he doth, an Action lies against him.

1 Sand. 135.
Raim. 160.

Letter: See in Title Behaviour, and Libel.

Liberties and Franchises,

ARE such which have Return of Writs, and not such which are Counties of themselves, as *Tork, Bristol, &c.* nor Towns which have Justices of Peace by Grant of the Queen; so that no other Justice intermeddled there.

Justice of Peace may execute his Authority within any Liberties not being a County, and it is good, but yet the Lord of that Liberty may have a Remedy against him.

Libellers and Libels.

MY Lord Coke (who often quotes Scripture in Law Cases) tells us, That *Job* himself was impatient at a Libel; but he who reads the Text will find, that it was not a Libel which provoked him, but because he was so miserable as to be derided by mean and despicable Persons, who was formerly the greatest Man in the *East*.

Job 30. 8.

So that laughing at the Calamities of another, is so far from being a Libel, that laughing at a Libel it self is no Fault; for if I hear it read, and laugh at it, 'tis no Publication.

9 Rep. 19.
13.

Every Libel is either in Writing, or without it.

If in Writing, then *copying* it, and delivering that Copy to another, is a Publication; so is repeating it to others after he hath heard it read; or reading it to them, knowing it to be a Libel.

If without Writing, then it may be by Pictures, as to paint a Man in Fools Colours; by Signs, as to fix a Gal-

5 Rep. 125.

lows, or any other shameful Sign, at the Door of the Party.

Poph. 135.

A Man affirm'd, That my Lord Chancellor Bacon had done Injustice, and spoke other scandalous Words of him; for which he had Sentence to perpetual Imprisonment, to pay 1000 *l.* to ride on a Horse with his Face to the Tail from the Fleet to Westminster, with his Fault written on his Head, to acknowledge his Offence in all the Courts at Westminster, to stand in the Pillory, and that one of his Ears should be cut off there, and the other in Cheapside.

To libel any private Person, is an Offence punishable as aforesaid; but to libel a Magistrate, is a great Aggravation of the Crime. I shall give some Instances in both.

Private
Persons.
Hob. 20.

And first to private Persons, a Man writes libellous Letters, which he dispersed in the Fields, without sending any to the Person himself; this is punishable as a Libel, tho' the Matter is true, for 'tis not to be justified in an Information; but in an Action on the Case, for printing and publishing a false and malicious Libel, the Defendant may justify that it was true; and many such Actions have been brought. *Har. 470.*

Hob. 253.
Moor. 627.

Sid.

A Man was a Suitor to a rich Widow, and the Defendant wrote a Letter to her, advising her not to marry him, for he was a debauched Person, and had the Pox, and was not worth a Groat; and that he declared, If he married her, then he would allow 50 *l. per Annum* to a Whore: This Letter was conveyed to the Widow, but not subscribed by the Defendant; but upon Evidence it appearing to be his Writing, he was fined 200 *l.* at Sessions.

Against
Magi-
strates.
Leon. 237.

To libel the Government, is a greater Offence than to libel Magistrates.

A Man was indicted for saying, That *Campion* was not executed for Treason, but for Religion, and that he was as honest a Man as *Crommer*; but the Jury did not find whether the Words were spoken *malitiose & seditiose*, and so the Defendant was discharged.

Cro. Car.
175.

One *Yess* libelled my Lord *Coke*, for the Judgment in the Case of *Magdalen* College, by writing, That it was Treason to be a Traitor and perjured Judge; this he fixed on the Gate of Westminster Hall, for which he was sentenced to stand in the Pillory with a Paper, &c. and to be committed till he made his Submission in every Court: He was also to find Sureties for his good Behaviour for Life, and to pay 1000 *l.* to the King.

Cro. Car.

But a more grievous Fine was set upon the Defendant, for speaking Words against a Judge sitting in Court; and this was one *Harrison's* Case, who came to the Court of Common Pleas, and

and said, *I accuse Mr. Justice Hutton of High Treason: The Man was angry with this Judge for his Argument about Ship-Money, in which he affirm'd, amongst other Things, That the King could not charge his Subjects to find Ships, &c.* He was fined 5000*l.* and imprisoned during the King's Pleasure.

The Defendant delivered a Paper to the Parson to publish in the Church, in which were these Words: *You are desired to bewail the Wickedness, &c. which of late is broken out in this (formerly) well govern'd City of Exeter; that God would turn their Hearts from committing those Wickednesses, with go unpunished by the Magistrate.* He was fined 100*l.* though 'tis no direct Accusation of the Magistrates, for it doth not set forth that they did know what Wickedness was committed, and let it be unpunish'd.

Sid. 219.

Libellers may be punish'd by Indictment, and fined, or by an Action on the Case where the Words are actionable; if a Libel against a private Person should be found, it ought to be burned, or carried to a Magistrate.

If against any Person in Office, or Magistrate, it ought to be delivered to some Magistrate, that the Offender may be found and punish'd.

The Person to be convicted, must be either the Contriver of the Libel, or a Procurer of contriving it, or a malicious Publisher; but reading, or hearing it read, is no Publication, unless he repeat Part of it afterwards in the Hearing of another. 9 Rep. 59.

If a scandalous Letter be directed to the Party himself, and not to a Third Person, no Action on the Case will lie, because 'tis not a Publication; but this tends to the Breach of the Peace, and therefore shall be punish'd by Indictment, or by Information.

Moor 627,

821.

2 Brownl.

151.

Hob. 62,

215.

Raym. 201.

Poph. 140.

And yet Sir Francis Bacon said, That such a private Letter doth in a Manner compel the Party to whom 'tis sent, to publish it to his Friends for their Advice, and for fear it should be publish'd on the other Side, so that this compulsory Publication shall be taken as a Publication by the Delinquent; the Fine was 500*l.*

If a Libel is found in an House, the Master of that House cannot be punish'd in an Information for framing, printing and publishing it; but he may be indicted for having it, and not delivering it to a Magistrate. 1 Vent. 31.

It hath been a Question, Whether a Person could be indicted before the Justices of Peace for a scandalous Letter concerning a private Person, because in the Commission of the Peace there are no Words to warrant it; but in the Commission of Oyer and Terminer, there is a Clause for that Purpose, viz. *De prolationibus querborum*; yet 'tis now resolved,

That such a Letter is indictable at the Sessions, because it tends to the Breach of the Peace. 1 *Levins* 139.

So do Words spoken of a Justice, as that he is not fit to talk Law. 3 *Mod.* 139.

Indictment for a Libel against a Justice of Peace.

Middlesex ff. *Jur.*, &c. quod cum 3 die Augusti Anno Regni, apud H. in Com. præd. Gaol. dictæ Domine Regine ad Generalem Quarterial. Session. Pacis tent. adtunc & ibid. coram A. S. ac J. P. Bar. & aliis Sociis suis Justiciar. dictæ Domine Regine ad Pacem in Com. præd. conservand. necnon ad diversas Felonias, Transgressiones, & alia Malefacta in eodem perpetrata. audiend. & terminand. assign. de quibusdam Prisonariis in eadem Gaola adtunc existent. & coram eisdem Justiciariis adtunc & ibid. indictat. rite & secundum leges & cons. hujus Regni Angliæ deliberat. fuit quidem tamen J. O. nuper de H. in Com. præd. Yeoman, præmissorum non ignarus, sed machinans & intendens præd. Justiciar. in magnum scandalum & infamiam inducere postea scil. quinto die Augusti, Anno Regni, &c. apud H. prædict. in Com. prædict. malitiose quendam famosum libellum (Anglice, vocat. a Libel) in scriptis ad defamationem Justiciar. prædict. edidit & publicavit, continen. inter alia hæc falsa & scandalosa verba sequen. ff. ubi revera, &c. contra Pacem dictæ Domine Regine Coron. & dignitat. suas, necnon contra formam * Stat. in hujusmodi casu edit. & provis.

* Will. 1.
cap. 34.

Library.

THE Provision for the Clergy is so very mean in many Places, that they cannot buy such Books which are necessary for their Studies; therefore several Libraries have been erected by Charitable Contributions; and by a late Act of Parliament, Provision is made to preserve the same.

† 7 Annæ.

By which Act, every Incumbent, before he shall be permitted to use such Library, must enter into a Bond to be approved by the proper Ordinary, conditioned for the Preservation of the Library, and to observe the Rules and Orders belonging to the same.

And if any Book shall be taken away or detained, the Incumbent, or any other Person, may bring an Action of Trover in the Name of the proper Ordinary, and shall recover treble Damages with full Costs; which Damages shall be applied to the Use of the Library.

The said Ordinary, or his Commissary or Official, or the Archdeacon, or his Official or Surrogate, if the said Archdeacon

deacon is not Incumbent of the Place where the Library is, may enquire in their Visitations of the State of such Library, and the Ordinary may appoint any Person to view it.

And where a Library is appropriated to the Use of the Incumbent, he must, within Six Months after his Induction, make a new Catalogue of all Books in the Library, and must sign the same, acknowledging the Possession of such Books; which Catalogue he must deliver to the proper Ordinary within the Time aforesaid.

And upon any Vacancy, the Library shall be locked up by the Church-wardens, or by a Person appointed by the proper Ordinary, or by the Archdeacon, unless the Place where such Library is kept shall be used for the Vestry or otherwise, for Dispatch of Business; and after that is done, the Place shall be lock'd up.

And likewise, a Book shall be kept in the Library for the entering of all Benefactions, which the Incumbent is to see fairly enter'd, and the Ordinary is to make proper Rules and Orders, but not contrary to the Orders of the Donor, which shall be enter'd in the said Book.

None of the Books shall be alienable without the Consent of the Ordinary, and then only when there is a Duplicate of such Book; And if any Book is taken away or lost, a Justice of Peace may grant his Warrant to search for the same; and if 'tis found, the Justice shall immediately order it to be restored to the Library.

A Warrant to search, &c.

To the Constable, &c.

Suffex ff. **W**Hereas Complaint hath been made unto me, by W. C. Rector of B. in the said County, That a Book, call'd *Hooker's Ecclesiastical Policy*, was lately taken out of the Library erected at B. aforesaid, and appropriated to the Use of the Minister there: These are therefore to require you to search diligently in all Places where you and the said W. C. shall suspect the same to be; and in case the same shall be found, that then you immediately cause the same to be restored to the said Library, &c.

Licence,

Licence,

Licences must be dated the Day of the Sessions, and must be sealed by three Justices, under Penalty of $\text{5 } l.$ and the Sessions must take Bond, that the Person licensed shall not forestall: The Licence costs $1 s.$ and the Recognizance $4 d.$

A Woman can have no Licence, and those Men who have Licences must sell their Goods themselves, and not by their Servants.

Two Justices may license poor diseased Persons to travel to the *Bath* for Remedies, so as they are provided of Relief in their Travel, and do not beg.

Without a Licence Persons must not buy Corn but in Markets.

Sessions determines these Offences. $3 \& 4 \text{ Ed. } 6. \text{ cap. } 27.$
 $\& 5 \& 6 \text{ Ed. } 3. \text{ cap. } 14.$

Linen Cloth.

HE who by racking, beating, or casting any deceitful Liquor, or by other Means, on Linen Cloth of any Sort to make it deceitful, or the worse for Use, forfeits the Cloth, may be committed for a Month, and fined according to the Discretion of the Justices. $1 \text{ Eliz. cap. } 12.$

Lodgers,

Taking away with an Intent to steal or imbezil any Bedding, Furniture or Chattel, which by Agreement they are to use with their Lodging, 'tis Felony. $3 \& 4 \text{ W. \& M. continued by } 4 \& 5 \text{ W. \& M. cap. } 24.$

Room-Late, See Bone-Late.

How-bells, Murrers, See Dogs.

Maihem.

THis is a Corporal Hurt, whereby the Use of any Member is lost, which might be either a Defence to ones Person, or occasion any Deformity; as if a Bone, Finger, Joint, is broken, or so wounded that 'tis made crooked and shrinks, or an Eye put out, or a Tooth broke, &c.

The old Writers have been so nice in this Matter, that they affirm it must be a Fore-Tooth broken; for if the Grinders or Cheek-Teeth are beat out, they say 'tis not a Maihem, *quia latens & non inducit corporis deformitatem*. Stamsf. 39.

But yet they allow Castration, *quomvis latet*, to be a Maihem; and my Lord Coke cites a Record to prove it, viz. *H. Hull, indictatus fuit de Maihemio eo quod abscidit virilia Johannis Monachi*, whom he caught in Adultery with his Wife.

Cutting off the Ear, no Maihem, *quia latens*; for this Offence an Indictment will lie at the Sessions, only with this Difference, That when a Fine is set, the Justices cannot encrease it upon View of the Person maimed, as the Court of B. R. may.

The Judgment upon a Conviction on an Indictment is a Fine, and upon an Action of Trespass, Damages, &c. and therefore a Recovery in Trespass is a good Bar in an Appeal of Maihem.

In an Appeal of Maihem, the Defendant pleaded in Bar, That the Appellant had recover'd 200 Marks against him in an Action of Assault, &c. and averred it was for the same Offence, and this held a good Plea.

But now by the Statute of 22 & 23 Car. 2. cap. 1. 'tis made Felony without Clergy in all their Counsellors, Aiders and Abettors, maliciously to cut off and disable the Tongue, put out an Eye, slit or cut the Nose, or cut off or disable any Limb or Member with an Intention to maim or disfigure.

Moor. 262.
1 Leon. 312.
4 Rep. 45.

Indictment thereon.

Sussex ff. *Jur.*, &c. *quod quarto die Augusti, Anno Regni, &c.*
J. O. de H. in Com' prad' Yeoman, vi & armis
clausum ejusdam T. B. apud H. prad' in Com' prad' frigit & in-
travit & in dict' T. B. adtunc & ibidem in Pace Dei & dictae
Dominae Reginae existens insulsum fecit ac cum quodam gladio di-
strixit (or as the Case is) ad valentiam trium solidorum quem
dictus J. O. tunc & ibidem in manu sua destra tenuit prad' T. B.
mali-

malitiose & illicite verberavit ac dextram pollicem præd. T. B. adtunc & ibidem amputavit ac sic eundem T. B. nequiter ac felonice adtunc & ibidem Maibemavit ad grave nocumentum ipsius T. B. ac contra Pacem dictæ Domine Regine Coron. & Dignitat. suas.

Maintenance,

Moor 562,
815, 816.

IS an Upholding any Quarrels by Word or Writing (having nothing to do therein) to the Disturbance of Common Right; 'tis a Crime which the *Normans* first brought in to *England*, and never put in Practice before that Time.

Calpa est rei se immiscere sibi non pertinenti.

'Tis thus divided; viz. $\left. \begin{array}{l} \text{Ruralis.} \\ \text{Curialis.} \end{array} \right\}$

Manutenentia Ruralis, is the unlawful taking or keeping Possession of another Man's *Estate*; this is punishable at the Suit of the Queen.

Manutenentia Curialis, is to maintain one Side in any Suit in a Court of Justice, but it must be *Pendente Placito*; for if Money is given before the Suit begun, 'tis not Maintenance. 3 H. 6. fol. 53.

Maintenance,
Champerp,
Embracerp.

When the Maintainer is to have Part of the Land or Debt when recover'd, 'tis *Champerp*; but where he is to have no Part of it, 'tis *Maintenance*; when he laboureth for Witnesses either to appear, or by instructing them, or threatening, &c. then he is an *Embracer*, and may be punish'd at the Suit of the Queen or Party.

To inform a Jury voluntarily, not as a Witness, but of his own Head, is Maintenance. 28 H. 6. fol. 6.

One Juror giving Money to another to pass a Verdict, is Maintenance. 17 Ed. 4. fol. 5.

If a Man of Power or Authority shall declare in the Presence of many People, That he will spend Money, for such a Person in a Suit, &c. 'tis Maintenance. 9 H. 7. fol. 18.

Moor 816.
2 Leon. 134.

Hob. 295.

To write a Letter to a Jury-man to appear, if 'tis done by one who is no Party to the Suit, 'tis *Maintenance*; but if by one of the Parties, 'tis *Embracerp*; yet my Lord *Hobart* tells us, That where the Defendant was indicted for desiring a Juror to appear, and to do him reasonable Favour, or Words to the like Effect; this is not punishable, because the Court must know the very Words.

To

To assist a Person prosecuting an *Indictment*, is not *Maintenance*, because 'tis for the Advantage of the Queen; but 'tis otherwise if the Prosecution had been by an Information upon a Penal Law. Godb. 159.

So when Men have a *joint Interest* as for *Right of Common*, Hob. 92. there they may join and enter into Bonds to defend that *Right* against the Lord or any other Person, and this is not *Maintenance*; * because 'tis in effect but the *Interest or Suit* of * But one; and as they have this Prejudice by it, that one cannot where 'tis be a Witness for the other, therefore 'tis reasonable they a Freehold, or where should all join for their common Advantage. one joins

who hath no Interest, 'tis otherwise. Moor 562, 788.

This Crime is punishable, either by an *Indictment* at Com- 32 H.8. c.9. mon Law, or by an Information upon the Statute of 32 H. 8. which is, That none shall unlawfully maintain any Suit, or retain any Person for Maintenance, embrace Jurors, or suborn Witnesses, on Pain to forfeit for every Offence 10 l. to be divided between the Queen and Prosecutor.

The preceding Paragraph of that Statute is, (*viz.*) That none Dyer 53. shall buy any pretended Title to Land, unless the Seller hath taken the Profits thereof one whole Year next before such Bargain; if he doth, then both Buyer and Seller are each to forfeit the Value of the Land.

A Woman was disseised, and being out of Possession, and not making any Entry, she made a Lease of the Lands to her Brother to try the Title against the Disseisor; and this was held *Maintenance*, tho' no Interest passed to the Lessee; so likewise where one supposed he had a Title, and contracted with another to sell it, and made a Lease to a Friend to try the Title, tho' no Action was brought, or any Thing done on it. Moor 266, 751. 1 And. 201. Leon. 167. 1.

Indictment thereon.

Kanc. ff. *Ur'*, & c. quod J. O. de H. in Com. prod. Gen. 4 die Aug. Anno Regni, &c. apud H. prod. in Com. prod. "quantum Affionem que fait in Curia Domine Regine coram ipsa Regina existit. inter quendam T. P. Querentem, & F. C. Defend. de Placito debiti pro phora predicti T. P. versus prefat. F. C. injusto & illicito manutenuit & sustentavit contra formam Statuti in hujusmodi casu editi & provis. & in manifestam retardationem & disturbancem Justitie, & in dicta Domine Regine contemptum, & predicti F. C. grave damnum ac contra Pacem dicta Domine Regine Coron. & Dignitat. suas.

naught if omitted. Savil. 41.

Prosecution on the Statute must be within a Year after the Offence committed.

* It must set forth a Suit. Savil. 42.

† This being the Word in the Statute, it had been 1 Vent. 302.

Q. alt.

Malt.

UPon the Statute of 2 & 3 Ed. 6. cap. 10. 'tis to be considered :

What
Time is
allowed
for ma-
king
Malt.
Sale
thereof.

In June, July and August, it must be Seventeen Days in the Fat and Floor steeping and drying, and in other Months Three Weeks.

Out of every Quarter, half a Peck of Dust shall be taken either by treading or rubbing, &c. before 'tis put to Sale, or forfeits 10*d.* per Quarter if sold, to be divided between the Queen and Prosecutor.

If bad and good is mingled and put to Sale, forfeits 2*s.* per Quarter, to be divided (*ut prius*.)

Constables may search where bad Malt is made or mingled with good, and by the Advice of a Justice may sell it at Discretion.

Offences,
where to
be deter-
mined.

In Sessions, by Presentment of the Jury, or by the Information of Two Witnesses.

Prosecution must be within a Year, &c. but those who make it for their own Use, cannot be punish'd by this Law.

Upon 39 Eliz. cap. 16.

Maltsters.
Repealed
by 9 & 10
Will.

Justices in Sessions may restrain their Number, and likewise the Number of Buyers of Barley to Malt.

Disobeying such Restraint, and being convicted by Two Witnesses, or Confession, may be committed three Days without Bail, and to continue till he enter into a Recognizance of 40*l.* before one Justice to obey the Restraint.

But Justices of the County at large cannot execute this Law in Corporations, it must be done there by Justices of the Corporation, or chief Officer, &c.

13 & 14
Will.
1 Anne.

By the Statute of 13 & 14 Will. there is a Duty of 6*d.* per Bushel given to the King, his Heirs and Successors; and 'tis enacted, That if that Duty is paid, and the Malt should perish either by Fire or Water, the Collector of the Duty shall repay to him.

But then he must prove his Loss at the Quarter Sessions by the Oath of Two Witnesses, and the Justices in Sessions must certify it under their Hands and Seals, and upon producing that Certificate, the Money must be paid.

By

By the Statute of 4 Anne, the like Proof must be made at the next Quarter-Sessions if the Malt is taken by the Enemy, and upon the like Certificate the Collector of the Duty is obliged to pay so much to the Proprietor as shall have been by him paid for the Quantity of Malt so proved to be taken.

Before I leave this Title, I cannot but take Notice, that my Lord Coke paraphrasing upon the aforesaid Statute of Ed. 6. tells us, That the Evils therein prohibited are *mala in se*, which he likewise tells us may be applied to Hops, and punishable by the Common Law. 4 Inst. 263.

'Tis not easily to be apprehended how an Evil only prohibited can be *mulum in se*, nor that the mingling bad Hops with good is punishable at Common Law, since we had no Hops in England before the 15th Year of Hen. 8. that being the first Time they were brought hither from the Spanish Netherlands.

Manslaughter, See Homicide.

Marriage, Vid. in Felony, and Woman.

Markets and Fairs.

These are either by Grant or Prescription, and if held otherwise, they are unlawful. 2 Sand. 174.

Now because it may be necessary to know how far the Property of a Thing is divested by Sale in Market Overt; therefore 'tis to be considered,

That in London, every Day, except Sunday, is a Market Overt, and the Sale in Shops there for a valuable Consideration is good.

But then it must be of such Goods which are proper to the Trade of him in whose Shop 'tis sold, as Plate to a Goldsmith, &c.

And it must be sold openly in the Shop, and not in a secret Manner; and the Buyer must not know that the Goods are stolen. In the Country, where Things are sold in distinct Places in a Market or Fair, the Goods must be sold in the usual Place appointed for the Sale thereof, otherwise the Property is not altered. Moor 300.

If I deliver Goods to another to keep for me, or if I pawn them, and he sells them in a Market, the Property is still in me. Hob. 79.

Sale

Sale upon a Sunday, tho' in Market or Fair, shall not alter the Property.

Miller, See Weights.

Measure, Vid. Weights.

Minister, Vid. Divine Service.

Misdemeanour.

Sid. 186.

ONE sent a Challenge by another to fight; they were both indicted for a Misdemeanour, and fined 100 l. a piece, and committed for a Month without Bail, and were to make a publick Recantation as the Court should direct, and to be of the Good Behaviour for Seven Years.

It would be endless to enumerate the several Offences which might be proper under this Title, I shall therefore mention a few, and no more.

Poph. 129.

A Man and his Wife disagreeing, she applied her self to one *Golding* a Parson, and offer'd him 40 s. to whip her Husband. The Parson undertook it, and came to the House in Woman's Clothes, and to the Chamber where her Husband was, and endeavoured to whip him with a Rod; in striving they were both hurt; the Parson run away from the Husband, who died a little Time after this Scuffle: And this being proved, the Wife and the Parson were each of them fined 500 l.

Sid. 168.

Sir C. S. was indicted at Common Law for a Misdemeanour, viz. for shewing himself naked in a Balcony in *Covent-Garden*: He confessed the Indictment, was fined 2000 Marks, and to be committed for a Week without Bail, and to be of the Good Behaviour for three Years.

Sid. 208.

Another was indicted for seducing an Apprentice to a Bawdy-house, and causing him to spend his Master's Money.

Sid. 231.

Another for intending to kill the Master of the Rolls, and offering a Person 100 l. to do it; he was fined 1000 Marks, to be imprisoned three Months without Bail, and to be of Good Behaviour during Life.

Sid. 312.

Another for reading a Release to an illiterate Man in other Words than it was written, which he sealed.

Misprision,

Of Treason.

IS where one knoweth that another hath committed Treason or Felony, but was not consenting to it, and yet conceals the Offender.

If he knoweth of the Treason before 'tis committed, and assents to it, then he is a principal Traitor.

So if he receive and comfort a Traitor, knowing him to be so.

Concealing Treason, was Treason by the Common Law, but now by the Statute of 1 & 2 Mar. cap. 10. 'tis declared to be Misprision.

Forging Foreign Money, is Misprision of Treason, per 14 Eliz. cap. 3.

The Judgment in Misprision of Treason, is Forfeiture of Goods for ever, Forfeiture of Profits of Land during Life, and Imprisonment during Life.

By the Common Law, concealing a Felony, or procuring the Concealment, or compounding it, was Misprision. Of felony.

But if a Man knows that a Felony is committed, and taketh his Goods again, 'tis no Offence, unless he taketh them or other Amends not to prosecute; and then 'tis called *Theft-bote*, which is an Offence more than a Misprision of Felony, because 'tis more than a Concealment of the Felon.

But the Punishment is the same in both Cases, viz. Fine and Imprisonment, if in a common Person; if in an Officer, Fine; and tho' paid, Commitment for a Year.

| | | |
|--|---|--------------------|
| In a Grand Juror. | By discovering the Persons indicted, or Evidence; punishable by Fine and Imprisonment. | Other Misprisions. |
| Judge. | By any Person assaulting him, the like Punishment. | |
| Juror. | By abusing him, for giving a Verdict against the Offender, the like Punishment. | |
| Prisoner. | Rescuing him from the Bar of B. R. loses his Right Hand, Goods, &c. Profits of Lands during Life, and perpetual Imprisonment. | |
| Striking. | Sitting the Courts at Westminster in Presence of the Court, or drawing a Weapon, the like Punishment. | |
| Drawing Weapon. | In Presence of those Courts, or before the Judge of Assize, upon any Judge or Justice, tho' no Stroke given, the like Punishment. | |
| Striking in the Presence of the Queen. | If Blood is drawn, Loss of Right Hand, and perpetual Imprisonment, per 33 H. 8. cap. 12. | |

Though Justices of Peace are not empower'd by their Commission, or by any Statutes, to hear and determine these

Mistrial. Money, &c.

Offences; yet since 'tis against the Peace, they may cause the Offenders to be taken, and two Justices may take Informations upon Oath against such Persons, and put it into Writing, and bind the Witnesses in a Recognizance to Prosecute and give Evidence at the Assizes, &c.

Money.

IF any refuse lawful Money in Payment, he may be compelled by the Officer of the Place to receive it, and be committed or punished as he thinks fit; and if an Officer refuse it, a Justice may punish him at Discretion. 19 H. 7. cap. 5.

Mortuaries,

ARE not to be taken, but where accustomed to be paid, nor where the Goods of the Deceased are under Ten Marks.

A Spiritual Person taking more than 3 s. 4 d. where the Goods are under 50 l. and above 6 s. 8 d. where the Goods amount beyond the Value of 30 l. and under 40 l. or above 10 s. where they are above 40 l. forfeits all taken above his Due, and 40 s. besides to the Party grieved, to be recovered by Action of Debt, &c. 21 H. 8. cap. 6.

Mittimus.

MUST be to the Common Gaol, by 23 H. 8. cap. 2. It must be under Seal.

It must contain the Cause of Commitment.

It must have an apt Conclusion, (*viz.* There to remain till delivered by due Course of Law;) or else the Warrant is void.

Murder,

Murder,

IS defined by *Bracton*, who wrote about the latter End of the Reign of H. 3. thus: That it was *Occulta hominum Extraneorum & notorum occisio manu hominum nequiter perpetrata.*

The Word *Occulta* was very necessary in this Definition, for it distinguished Murder from Manslaughter; for if it was done secretly, it was always Murder; but if openly, then it was only Manslaughter.

And as the Law then stood; if a Man was found slain, he was taken to be *Extraneus*, that is, a *Frenchman*, if it was not proved he was an *Englishman*; which Proof was incumbent upon the Country, by Inquisitions taken before the Coroner, which he was bound to return to the Justices in Eyre; and sometimes such Inquisitions were taken before those Justices themselves.

And since at that Time the killing a Foreigner was always reputed Murder, though it happened *per infortunium*: Therefore if the Criminal was taken, he was to be tried by *Ordeal*; if he was not taken, then the Country was to be amerced; but if a Foreigner had killed an *Englishman*, he was in no Manner of Danger.

So that the Law being then so very severe against the *English* in Favour of the *Normans*, 'tis probable the Statute of *Marlbridge* was made, and about the same Time in which *Bracton* wrote; by which 'tis enacted, That *Murdrum de cetero non adjudicetur coram Justiciariis ubi per infortunium adjudicatum est, sed locum habet de interfectis per feloniam & non aliter.*

* Cap. 16.

After the making this Statute, if a *Frenchman* had been killed by *Misfortune*, the Country was not to be amerced, tho' the Criminal was not taken, neither was he to be tried by *Ordeal*, if taken.

But since *Bracton* wrote, we have another Definition of Murder, *viz.* That it is the killing a Person within the Realm upon *Malice Forethought*, the Death ensuing within a Year and a Day. *H. P. C. Fol. 53.*

But this Crime is aggravated by the Quality and Condition of the Person who commits it; as where a *Maid-Servant* and a *Stranger* conspired to rob the *Mistress*, and in the Night-time the Servant let the other into the House and lighted him to her *Mistress's* Bed, where he killed her, the Servant neither doing or saying any Thing, but only held the Candle; this is Murder in the *Stranger*, and Petty-Treason in the *Servant*.

Moor 91.
Dyer 128.

Murder.

So where the *Wife and her Servant* conspired to kill the *Husband*, and appointed both Time and Place, and the *Servant* alone, in the *Absence of the Wife*, killed him, this is *Petit-Treason* in both; but if he had been killed by a *Stranger*, the *Wife* should be hanged, and not burnt, because she cannot be guilty of *Petit-Treason* where the *Principal* is only guilty of *Murder*.

This Offence was always punished with the *Death* of the Offender.

* That is,
for Man-
slaughter,
and not
Murder.

'Tis true, in the Time of our *Saxon Ancestors*, the Punishment for * Killing was not by *Blood*, but by *Fines*, for in those Days every Man's Head was valued according to his *Quality*, by a certain Coin called *Thrymses*; which being of the Value of three Shillings in Money, *Mr. Selden* has thus computed:

*Jani Anglo-
rum, &c.
fol. 113.*

| | | | |
|-----------------------------|------|---|---|
| A Countryman killed, at | 0040 | 1 | 0 |
| A Man in Orders, | 0300 | 0 | 0 |
| A General, or Captain, | 0600 | 0 | 0 |
| A Bishop, or Alderman, | 1200 | 0 | 0 |
| An Archbishop, or Nobleman, | 2250 | 0 | 0 |
| The King, | 4500 | 0 | 0 |

Killing a *Woman with Child*, the Offender must pay not only according to the Value of her Head, but likewise for the Child in her Womb half as much as for a living Child according to the *Quality* of his Father.

If above *Thirty* were in Number, and one of them killed another, he that actually committed the Offence was to pay the Value of his Head slain, and likewise a *Fine* to his *Kin* dred, and every one in the Company 30 s. which Penalty was to be encreased according to the *Quality* of the Person killed.

If a *Welshman* grew so rich as to have Land, and maintain a Family, and pay Tribute to the King, he was valued at five Pounds; and if he had no Lands, he was valued at three Pounds ten Shillings.

These were the Laws of King *Alfred*, and of his Grandson *Athelstan*: But these Punishments by Fines were only inflicted where the Person was killed upon a sudden Quarrel, which we call *Manlaughter*; for even in that Case, the Offender not only forfeited his Estate, but was to die likewise and for a long Time afterwards, until the Statute of * *Marebridge*, the killing a Man by Misfortune was adjudged *Murder*, with this Difference, That he might purge himself of such Offence by paying the Sum according to the Valuation of the Party slain.

* s3 H. 3.

The Reason of this Pecuniary Compensation was rightly observed by Mr. Selden; it was, because our Ancestors were very tender of Life, that two Men might not die upon the Account of the same Misfortune: But premeditated and clandestine Murders were never excused by these Payments, those were always punished by Death, and so was Manslaughter likewise, where the Party was not able to pay the Valuation of him who was killed.

Before I shall examine the said Definition of Murder, I shall mention a few Things concerning the Indictment for this Offence, and the finding of the Jury.

If several are indicted for Murder, the Jury cannot find *Billa vera* as to one, and that 'tis *Manslaughter* in the other; for if they find it so, a new Bill shall be preferred against those who are found guilty of Manslaughter.

If a Man is indicted for Murder, they cannot find *Billa vera se defendendo*, for this is Contradictory, and the Defendant must be indicted *de novo*.

The Place where the Stroke was given must be set forth in the Indictment; and therefore it is not sufficient to say, That he assaulted the Person, and that he gave him a mortal Wound, without shewing in what Place.

Two of my Lord Dorset's Servants quarrelling at the Fire, went out and fought in the Park, *juxta Knowl*, and one was killed; for which the other was indicted, but it did not set forth in what Place or County the Park was, neither was the Word * *percussit* in the Indictment, but *dedit vulnus*; and for these Reasons it was quashed.

So when it was *percussit cum gladio*, but did not say *Felonice*. Cro. Eliz. 193.

The Stroke was laid to be *super sinistram partem Lateris*, and did not shew in what Part; and this was held certain enough, because 'tis well understood what is meant by the Word *Latus*; but where it was *cum pugione in sinistra parte colli percussit*, this was held ill, for it should have been *Colli*.

So where the Stroke was alledged to be given at D. where- of the Plaintiff died at S. & sic apud D. he killed him; this is impossible. Noy 45.

Then as to the Day, the Indictment was, That the Defendant assaulted the Person on the 12th Day of February at Oxford, *adunc & ibid. datus ei a mortal Wound, &c.* and that he languished from the 12th *usque ad* 13 Feb. on which 13th Day he died; and so the said R. C. on the 13th Day did kill him: This is impossible, because the Word *usque* excludes the 13th Day. 1 Bulst. 203.

Indictment.

3 Bulst. 206.
1 Rol. Rep.
407, 408.

2 Rol. Rep.
52.

Place.
1 Bulst. 203.

1 Bulst. 12.

* *Ex malitia sua pre-cogitata*
murdravit
is good,
without
the Word
percussit.
Dyer 99.
5 Rep.
122. b.
2 Cro. 95.
1 Bulst. 109.

Day.

Cro. Eliz.
739.

But where it was, That on the 22 *Januarii*, &c. *percussit* the Person at B. *dans ei plagam mortalem*, &c. of which he died the 23d of *Feb.* following, and so he murdered him, *die*, &c. *pred'* that must refer to the Day last mentioned; for otherwise there being Two Days mentioned, it would be uncertain to which it should relate, *viz.* either to the Day of the Stroke, or Death.

1 Lev. 146.

But to return to the Word (*Murder*) as above defined, we may examine, *viz.* 1. What is a Killing.

1. What
is a Kill-
ing.

| | | | | |
|---|---|------------|---|-------------------|
| And this may
be by several
Means, as by | { | Bruising, | { | Smothering, |
| | | Crushing, | | Strangling, |
| | | Famishing, | | Weapon, and other |
| | | Poisoning, | | Ways. |
| | | Shooting, | | |

As by laying a Sick Man in the Cold, hiding an Infant under Leaves or Trees, which is afterwards destroyed by Vermin; stirring up a Dog or any other Beast accustomed to bite or do Mischief, knowing it to be such.

2. The
Person
killed.

Must be *in Rerum Natura*, for if a Woman take Poison to destroy the Child within her, being Quick, 'tis not Felony, but a great Misdemeanor, unless born, and afterwards dies through this Occasion.

Advising to destroy it before born, and afterwards 'tis born and destroyed, the Adviser is Accessary.

3. With-
in the
Realm.

Wounded and dying beyond-Sea, the Offender cannot be punished at Common Law, but may before the Constable and Marshal.

Wounding and dying upon the Sea, before the Admiral of *England*, by Vertue of the Statute of 22 H. 8. *cap.* 13.

Striking on the Sea and dying, *infra Corpus Comitatus*, is an Offence, which my Lord *Hales* tells us is not punishable: *H. P. C. fol.* 54. and yet 'tis not denied but that the Killing shall have Relation to the Death, and not to the Stroke.
4 *Rep.* 41.

Striking in one County, and the Person dieth in another, the Trial shall be where he died.

But Accessary in one County to a Murder done in another, when the Principal is convicted, and that is certified, may be tried in the County where Accessary. *H. P. C.* 54.

4. Ma-
lice fore-
thought,

This is Twofold, { Implied.
 { Express.

Malice

Malice Implied, may be collected several Ways:

- (1.) From the Manner of the Fact.
- (2.) From the Person killed.
- (3.) From the Person killing.

By wilful Poisoning; by riding into a Fair with an unruly Horse, knowing him to be so, on purpose to do Mischief, and Death ensues. *Moor 754.*

From the Manner of the Act done.

Throwing a Stone over an House amongst a Multitude of People.

These and such-like are unlawful Acts; and it appears plainly, that the Person had an Evil Intention of doing Hurt to some Body, though not against any Person in particular; and this implies Malice.

A Smith struck his Servant with an Iron-Bar, and killed him. So if a Father correct his Son, or a School-master his Scholar, with such Instruments as may probably kill them, and Death ensues, 'tis Murder.

So if a Smith runs a hot Iron into his Servant's Belly, or a Mother kicks and stamps on her Child's Belly, and Death ensues; in all these Cases 'tis Murder, and the Law supplieth the Malice in Persons who are guilty.

But in a late Case, we are told, This is express Malice, (*viz.*) If a Man assaults another with a dangerous Weapon, but without any Provocation, 'tis express Malice from the Nature of the Fact, which is Cruel.

Rex versus Mawgridge.

Killing without a Provocation.

Such a Provocation as must extenuate the Killing from Murder to Manslaughter, must be where there is some actual Violence or Striking; for Words alone are no Manner of Provocation, tho' they are never so opprobrious, nor any affronting Gestures, tho' never so reproachful.

But if angry Words pass between two Persons, and then one pulls the other by the Nose, or fillips him with his Finger, and the Person thus assaulted kills the other with a Sword, this is but Manslaughter, because the Peace was broken by the Deceased, and with a great Affront to him upon whom he made the Assault.

And here it may not be improper to mention *Mawgridge's* Case:

He threw a Bottle at Mr. *Cope*, which struck him on the Head, and immediately drew his Sword and gave him a mortal Wound; but between the Time of drawing the Sword and giving the Wound, Mr. *Cope* threw another Bottle at *Mawgridge*, with which he broke his Head, but Mr. *Cope* had no Sword drawn, and never spoke a Word afterwards; this was adjudged Murder, for it was out of Malice prepenfed,

for the throwing the first Bottle was with Design to do Mischief, and the drawing his Sword was to prosecute that Design; and though Mr. Cope threw another Bottle at Mawgridge before the Wound was given, that will not alter the Case, for it was justifiable in him, and in his own Defence.

If two Men fall out, and give each foul Words, and a third Person strikes one of them and kills him, this is Murder.

But if *A.* assaults *B.* without any Provocation, and draws his Sword and runs at him, and then *B.* draws his Sword in his own Defence, and is killed by *A.* 'tis Murder.

But if two Men fight, and another Person coming to assist one of them killeth the other, this is Manslaughter, because there was an actual Fighting and striving with Violence between the other two.

Yet if a Man is unduly arrested or deprived of his Liberty, and makes no Resistance, and another rescuing him kills a Man, this is Murder, for Injuries must not be redressed by Force. *Keeling 60, 61.*

If one who is wounded neglects his Cure, or lives disorderly; yet if he die of those Wounds, 'tis Murder or Manslaughter, as the Case shall appear upon the Evidence against the Criminal, because the Wounds were the principal Cause of the Death which ensued. *Keeling 26.*

From the
Person
killed.
Godb. 154.

Stabbed without Weapon drawn. 1 Jac. cap. 8.

Five Years after the making this Statute it was held, That if the Person killed had a Stick in his Hand, it shall be accounted a *Weapon drawn*.

And since that Time there have been many nice Explications of this Law; the Words are, *viz.* Stabbing another that hath not *then* any Weapon drawn, or that hath not *then* *first stricken* the Party which stabs, and the Person dying within 6 Months then next following, this is Murder, and without Clergy. There is a Proviso, That the Act shall not extend to one who kills another *Se Defendendo*, or by Misfortune; nor to one who in keeping the Peace, or chastizing his Servant or Child, shall unwillingly commit Manslaughter.

Jones 340.

Anno 9 Car. 1. One Byard struck Ward, who struck again, and then Byard stabbed the other with a Knife; the Question was, Whether he should have his Clergy, because he was struck by the other before he stabbed him? And adjudged he should not, because the Words *first stricken* in the Statute shall be construed the very first Stroke given by the Party slain at the Beginning of the Quarrel, and not any Stroke before the Stab.

So where two quarrel, one throws a Pot at the other, which missing him, the other drew his Sword and killed him; and being indicted on the Statute of Stabbing, the Matter was found specially, and the Doubt did arise upon the Words of the Statute, viz. He that stabs another, not having a Weapon *then drawn*, &c. whether the Particle *then* should relate to the Beginning of the Quarrel, or to the Time of the Stroke given? And by the better Opinion, it was held to extend to the Quarrel; for if in fighting one lets his Sword fall, or throws it at another, and is *then* killed, 'tis plain he had not *then* a Weapon, viz. at the Time of the Wound given; but yet, because it was once drawn during the Quarrel, the Prisoner shall not be excluded his Clergy. 3 Levintz 255.

4 Rep. 51.
9 Rep. 66.

Anno 15 Car. One David Williams, walking on St. David's Day with a Leek in his Hat, was jeered by a Porter, and thereupon Williams took a Hammer out of Marbury's Shop and threw it at the Porter, with an Intention to hit him, but he missed the Porter and struck Marbury, of which he died: The Question was, Whether this was within the Statute of Stabbing, for Marbury had no *Weapon drawn*? And adjudged, that it was not. There is no Reason given for this Judgment by Justice Jones, who reports the Case; but I suppose it might be, because Williams had no Anger or Displeasure against Marbury, and so was within the Proviso of the Statute, which exempts any killing by *Misfortune*, as this seemed to be.

Jones 432.

But it seems Williams was not indicted for Murder, but for Manslaughter, on the Statute of Stabbing; if he had been indicted for Murder, he ought to have been found guilty, for the Provocation was not so great as to excite him to kill another. Keeling 133.

If the Indictment is, That R. stabbed the Person, and that P. and H. were present and abetting, and they are all found guilty, R. shall be hanged, but the other Persons shall have their Clergy; for if it can be known who gave the Stab, then though in Judgment of Law all those who were present and abetting are Principals, yet the Statute being so penal, ought to be extended only to him *who actually stabbed* the other.

Allen 441

Constable killed, or any assisting him in Execution of his Office; the like of any other Magistrate.

Officers.

This is Murder, but then they must know he was Constable, and coming to keep the Peace, and for that Purpose he ought to command them in the Queen's Name to keep the Peace, otherwise 'tis but Manslaughter in him that kills him.

Officers

1 Cro. 132,
183.

4 Rep. 91.
Cro. Car.
386, 537.

Cro. Car.
372.

Sid. 160.

1 Vent. 216.

Jones 429.
2 Rol. Rep.
120.
Moor 86.

From the
Person kil-
ling.

Officer killed in the Execution of a lawful Warrant, tho' he doth not shew it, being demanded, and tho' there is a Mistake or Error in the Process; but then he must be doing what is warranted by Law, for if he open a Window to arrest, &c. and is killed, 'tis only Manslaughter. *Morch. 3.*

An Officer had a Warrant to arrest Sir H. Ferrers, Knight, but he was a *Baronet*, and never Knighted, and the Officer was killed in executing his Warrant; this was held to be Manslaughter, because he had no Authority to arrest the *Baronet*, and so his Warrant was illegal.

All who are present and assisting a Person *arrested*, knowing of the Arrest, are principal Murderers if the Officer is killed.

A Collector of the Chimney-Money disreined a Silver Cup; the Maid-Servant, in the Absence of the Master, hinder'd him from going out, for which he beat her against the Post and killed her; this was held to be Manslaughter.

Several come to rob a Park, one kills the Keeper, 'tis Murder in the other, if in the same Park, tho' at a Distance when the Fact was done, because their Entry was unlawful, and from thence Malice may be implied. *Palm. 35.*

Several Owlers had loaded Wool to transport it, the King's Officers opposed them in the Night, one of the Owlers shot out of a Fuzee and killed one of his own Company; this was held by all the Judges to be no Murder.

For it was not found that he discharged the Gun against the King's Officers, tho' it might be reasonably intended he did, because he was armed, and in Prosecution of an unlawful Act in which he was obstructed; and in such Case, if he had killed one of his own Party, though by Accident, it had been Murder in him, but not in the rest, unless they knew his Design was to kill the Man.

One assaults another with an Intention to rob him, and being resisted, kills the Person he assaulted, it's Murder.

If a Gaoler by hard Usage kills a Prisoner, like Offence.

Executing of Martial Law in Time of Peace, is Murder; Malice may be collected out of Circumstances, shewing the Temper of the Person killing.

As if two fight in a Tavern and are parted, and one of them alledgeth the Inconveniency of that Place to fight in, and they appoint another Place and fight presently, where one is killed; 'tis Murder, because Reason had so much the Mastery of his Passion, as to judge of the Conveniency of the Place. *Sid. 277. 1 Bulst. 86. 3 Bulst. 171.*

If two fall out in the Morning, and fight in the Afternoon, and one is killed, 'tis Murder, for there being Time to allay the sudden Heat, the second Meeting must be in Malice.

But

Murder.

411

But some Provocations are so violent, that they mitigate the Crime; as where two Boys fought near their Father's House, and one being bloody, complained to his Father, who was then a Mile off, but he went and beat the Boy so that he died; 'tis not Murder. *Godb. 182. 2 Cro. 296.*

So where the Husband found another in the Act of Adultery with his Wife. *1 Vent. 158.*

Malice express, may appear:

As if a Man committeth a Resolution to do an unlawful Act, as to rob an Orchard, and Death ensueth, 'tis Murder.

Malice between two, they fight, tho' the Deceased give the first Stroke, 'tis Murder in the other. *1 Bulst. 86. 3 Bulst. 171, 172.*

If the Deceased challengeth another, who refuseth to fight, but afterwards upon Importunity meeteth and kills him, 'tis Murder.

All who are present and assisting, are Principals. *Sid. 160.*

If they are not present, yet if they come to do an unlawful Act, and are in the same House or Place, though at a distance, 'tis Murder in them.

Tho' Death not intended, if the Act be deliberate and malicious, and Death ensueth, 'tis Murder; As the Keeper of a Park finding a Boy stealing of Wood, tied him to a Horse's Tail, which in running away killed the Boy; this was Murder, because a deliberate Act. *Cro. Car. Holloway's Case, 131.*

Malice between two, the one striketh at the other and killeth a third Person, 'tis Murder; but if no Malice between them, 'tis Manlaughter.

Malice between two, and the one assaulting the other, kills his Servant coming to his Defence, Murder. *Dyer 128. b.*

One buys Poison to kill another, and a third Person eats it and dies, Murder. *Plowd. Com. 473, 476.*

Two or more come to do an unlawful Act, one of them kills a Man, 'tis Murder in both, if abetting or ready to aber, tho' but looking on.

But then the Abettor must know the malicious Design of the other, and the Killing must be in Pursuance of that unlawful Act, and not collateral to it.

And not only so, but it must be done deliberately, for if 'tis upon a sudden Affray, and Death ensues, 'tis but Manlaughter.

Besides, the unlawful Act ought to be such which tends to the Hurt of another, either immediately, or by Consequence;

In the Principal who doth the Act. *1 Rol. Rep. 360.*

Jones 198. Palm. 547.

Malice intended to one, and Death of another ensueth.

Principals in the second Degree, Aiding and Abetting.

But

quence; as if Persons assemble in a Riotous Manner with offensive Weapons, and one is killed, 'tis Murder.

Two having Malice, fight, the Servant of one of them not knowing the Malice, &c. killeth the other; this is Murder in the Master, and Manslaughter in the Servant.

In the Accessary before the Fact.

One commands another to kill a third Person with a Gun, he kills him, not by shooting, but with a Sword; 'tis Murder in the Person commanding.

But if by Mistake he kills another Person, 'tis Murder in him killing, and the Person commanding is not so much as Accessary to it.

If one command another only to beat a third Person, and upon this Beating, Death ensueth, 'tis Murder in the Person commanded, to which he who commanded is likewise Accessary, because Death ensued upon that unlawful Act of Beating.

In the War with France, Mr. Mansell seized some French Goods at Sea, and brought them Home, and one Herbert pretending to be Deputy Admiral, came with Force to Mr. Mansell's House, and assaulted those who kept Possession of the Goods; a Gentlewoman came to the Door without any Weapon, and was killed with a Stone, which was thrown by Mr. Herbert's Servant at another; and it was held, that this was Murder in Mr. Herbert and all his Company, for the Person was killed in Defence of the Possession of the House, and that made it Murder, though there was no Malice premeditated. Serjeant Moor, who reports this Case, says, That the Person killed was Aunt to both the Gentlemen, and perswaded them to be Friends. Moor 87. Dyer 128. b.

Het. 126.

The Judgment in Murder must be the common and ordinary Judgment allowed by Law; and it cannot be, that the Offender shall be hanged in Chains, though for a notorious Murder, as for stabbing the Duke of Buckingham by F. but when he is dead, the Body is at the Queen's Disposal.

See in Appeal.

By the Statute of 24 H. 8. cap. 5. 'tis enacted, That if any Person should be indicted for the Death of another attempting to Murder, Rob, or commit Burglary, and 'tis so found by Verdict, he shall forfeit no Lands or Goods, but shall be acquitted. A Man in the Night-time attempted to break open the Door of a Dwelling-house, and one who was only a Lodger would have dissuaded him from it, who thereupon broke the Windows, and thrust his Rapier at the Lodger, who with a Spit wounded the Rogue in the Eye, of which Wound he died; this was held not to be Felony, but excusable by this Statute, though it was done by a Lodger, and not by the Master of the House in Defence of his Possession.

Crö. Car. 544.

I shall

I shall add but one Case more to this Title, because 'tis a very strange one, viz. Husband and Wife had lived many Years together, and became very poor; the Man told his Wife, he was weary of living, and that he would kill himself; the Woman replied, She would die with him: Thereupon he desired her to buy Rats-bane, and they would put it into Ale, and drink it together; she bought it and put it into the Cup, and both drank. The Wife considering what she had done, took Sallet-Oyl and expelled the Poison by vomiting, and recovered, and the Man died. The Question was, Whether this was Murder in the Wife? I do not find it was resolved. *Moor 754.*

By a Statute made in the Reign of King James I. 'tis declared, That where a Bastard-Child shall be concealed, it shall be taken to be born alive; and if 'tis dead, it shall be adjudged to be murdered; so that by this Statute, Concealment of the Birth of a Bastard is made the Crime. Now if a Woman is with Child of a Bastard, and going well to Bed is taken with Travelling-pains in the Night, and knocks for some Body to assist her, but is delivered without any Help, and then puts the Child in a Trunk, and conceals it for a Day; if there was no Sign of any Hurt upon the Body of the Child, 'tis not Murder within that Statute, because at first there was no Intent to conceal it, and there being no visible Sign of Hurt, it shall be intended the Child was dead-born; but if there had been an Intent to conceal it, then 'tis Murder, though the Child was not born alive.

So that the Concealment being by the Statute made an Evidence of the Murder, the Indictment may be, *Quod infantem masculum vivum parturit qui quidem infans masculus ad tunc & ibidem vivus existens natus per legem hujus Regni Anglia spurius fuit, (Anglice, a Bastard) and so on in the ordinary Form; and conclude, contra Pacem, and not contra formam Statuti: For the Statute doth not make any new Offence, but declares what shall be Evidence of the Murder. Keeling 32.*

An Indictment for Murder with a Sword.

Suffex ff. *JUR. &c. quod J. O. nuper de H. in Com. prad. Yeomanus Deum pra oculis non habens sed instigatione diaboli motus & seductus sexto die Augusti, Anno Regni, &c. circa horam nonam post meridiem in nocte ejusdem diei apud H. prad. in Com. prad. vi & armis in & super quendam T. P. in pace Dei & dictae Dominae Reginae ad tunc & ibidem existens insultum fecit & pradiit. J. O. cum gladio ad valentium trium solidorum quem idem J. O. in manu sua dextra ad tunc & ibidem extract. habuit & tenuit felonice voluntarie & ex malitia sua praecogitata prad. T. P. apud H. prad. in Com. prad. percussit & vulneravit & eidem T. P. apud H. prad.*

Dyer 304.

* If ibidem had been omitted, the Indictment would have been ill. in Hct. 35.

* If he died
presently,
then say,
instantur
obiit.

† This
Word doth
supply Ex
malitia sua
præcogitat.
Dyer 68.
contra 99.
304. Cro.
Eliz. 900.

in Com. prædict. felonice & ex malitia sua præcogitata cum gladio præd. unum vulnus mortale in & super dextram partem tibiae suae dedit longitudinis trium pollicium & profunditatis duorum pollicium de quo quidem vulnere mortale idem T. P. a præd. sexto die Augusti Anno supradicto usque nonum diem ejusdem mensis Augusti apud H. præd. in Comitatu præd. languebat & languidus vixit quo quidem nono die Augusti Anno supradicto præd. T. P. apud H. præd. in Com. præd. de vulnere mortali præd. * obiit & sic jur. prædict. super Sacramentum suum præd. dicunt quod præd. J. O. præd. nono die Augusti Anno supradicto apud H. præd. in Com. præd. prædictum T. P. modo & forma præd. ex malitia sua præcogitata felonice & voluntarie interfecit & † murderavit contra pacem dictæ Domine Regine Coren. & Dignitatem suam.

I find a Case where Murderavit instead of Murdravit was held ill, but that Burgalariter for Burglariter was held good; and the Reason given was, That 'tis as good a Word as Burglariter: I admit that they are both Words of Art adapted to particular Offences, and both in Sound express the different Crimes; but I can see no Reason why Murderavit should not be as good a Word as Burgalariter, for in one there is only the Addition of an e, and in the other of an a: This is a Nicety, which, like the Word it self, is to be found no where but amongst the Lawyers.

For Murder with a Gun.

As in the former Precedent, to insultum fecit:

Sufflex ff. **E**T quod præd. J. O. quoddam tormentum (Anglice, a Hand-Gun) ad valentiam octo solidorum quod idem J. O. in manibus suis atunc & ibidem habuit & adunc & ibidem cum pulvere sulphurato & globulis plumbeis onerat (Anglice, charged with Gun-Powder and Bullet) felonice & voluntarie ex malitia sua præcogitata versat & contra præfat. T. P. atunc & ibidem exoneravit (Anglice, did discharge) ratione cujus quidem tormenti exonerationis sic ut præfertur onerat. præd. J. O. præfat. T. P. super dextram Mammillam (Anglice, the Right Pap) ipsius T. P. apud H. præd. in Com. præd. cum globulis plumbeis præd. ex tormento præd. per præfat. J. O. sic ut præfertur exonerat. felonice & voluntarie & ex malitia sua præcogitata percussit penetravit & vulneravit & dedit eidem T. P. atunc & ibidem cum globulis plumbeis præd. ex tormento præd. per præfat. J. O. sic ut præfertur exonerat. super prædict. dextram Mammillam ipsius T. P. unam plagam mortalem latusculam, &c. 5 Cook 120.

By breaking the Neck.

Middl. ff. JUR. &c. to insultum fecit.

Es quod præd. J. O. manus suas circa collum ipsius T. P. apud H. præd. in Com. præd. violenter, felonice, voluntarie & ex malitia sua præcogitata posuit & affixit & præd. J. O. cum manibus suis præd. sic ut præfertur circa collum prædicti T. P. ad tunc & ibidem violenter & ex malitia sua præcogitata posuit & affixit præd. collum præfat. T. P. ad tunc & ibidem felonice, voluntarie & malitia sua præcogitata frangebatur de qua quidem fractione colli præd. præfat. T. P. ad tunc & ibidem apud H. præd. in Com. præd. instanter obiit & sic, &c.

Upon the Statute of Stabbing, 1 Jac. cap. 8.

Sussex ff. JUR. &c. quod R. P. nuper de H. in Com. prædicti. Yeoman, Deum præ oculis suis non habens sed, &c. sexto die Augusti Anno Regni, &c. vi & armis, &c. apud H. præd. in Com. præd. in & super quendam R. O. * in pace Dei & dictæ Domine Regine ad tunc & ibidem existens. (præd. R. O. non habens aliquod telum tunc extractum (Anglice, a Weapon then drawn) nec imprimis percussit. præd. R. P.) felonice insultum fecit & quod prædicti R. P. cum quodam gladio ad Valentiam quinque solidorum quem ipse idem R. P. in manu sua ad tunc & ibidem habuit ventrem ipsius R. O. ad tunc & ibidem felonice percussit & pupugit non habens telum ad tunc extractum & non imprimis percussit. ibid. prædicti R. P. & ipse idem R. P. apud H. prædicti. in Comitatu prædicti. cum gladio prædicti. unum vulnus mortale præfat. R. O. in & super ventrem suum præd. dedit latitudinis unius pollicis & profunditatis duorum pollicum de quo quidem vulnere mortali præd. R. O. ad tunc & ibidem instanter obiit & sic Jur. præd. super sacramentum suum dicunt quod præfat. R. P. præd. R. O. præfat. sexto die Augusti apud A. præd. in Com. præd. modo & forma prædicti. felonice interfecit & * murdravit contra pacem dictæ Domine Regine Coron. & Dignitat. suas, & contra formam Stat. huiusmodi casu edit. & provis.

* These Words must be in, for he may be a Traytor and flying, and so lawful to kill him, Godb. 64.

† If that Word is not in, 'tis no more than Homicide. Dyer 261. a. 304. b.

Murder of a Child, by starving it.

Sussex ff. JUR. &c. quod quedam A. P. de H. in Com. præd. Spinster, gravida existens cum Infante masculino & vivo septimo die Augusti Anno Regni, &c. apud H. præd. in Com. præd. Infantem vivum præd. peperit. posteaq; scil. eodem die & anno prædicti Deum præ oculis non habens sed instigatione diaboli mota & seducta vi & armis, &c. apud H. præd. in Com. præd. in & super præd. Infantem masculum vivum felonice voluntaria & ex malitia sua præcogitata, insultum fecit dictumque Infantem vivum ad tunc

adunc & ibidem super terram projecit & felonice & voluntarie & ex malitia sua præcogitata apud H. prædict. in Com. præd. sustentare & nutrire recusavit & penitus neglexit ratione quarum quidem projectionis in terram & recusationis præd. Infantem vivum nutrire & sustentare præfat. Infans adunc & ibidem instanter obiit & sic iur præd. dicunt super sacrum. suum dicunt quod præd. A. P. Infantem præd. apud H. præd. in Com. præd. præfat. 7 die Augusti Anno supradicti modo & forma præd. felonice voluntarie & ex malitia sua præcogitata interfecit & murtheravit contra pacem, &c.

For Strangling of a Bastard-Child.

Dyer 186.
A good
Precedent.

Midd. ff. JUR. &c. As in the former Precedent to the Word *Vivum clam & secrete a corpore suo vivum parturivit* qui quidem Infans masculus sic virus & natus existens per leges huius Regni Anglie spurius fuit (Anglice, a Bastard) & quod præd. A. P. Deum præ oculis non habens instigatione diaboli mōa & seducta dicto septimo die Augusti Anno supradicti & quam cito Infans præd. natus fuit vi & armis, &c. apud H. præd. in Com. præd. in & super eundem Infantem masculum vivum existen. in pace Dei & dicta Domine Regina adunc & ibidem felonice voluntarie & ex malitia sua præcogitata insultum fecit & præd. A. P. eundem Infantem spurium sic virum existen. felonice voluntarie & ex malitia sua præcogitat. cum manibus suis circa collum Infantis vivi præd. fixavit apud H. præd. in Com. præd. suffocabat. * de qua quidem suffocatione præd. Infans spurius adunc & ibidem instanter obiit & sic, &c. & insuper Jur. præd. super sacrum suum ulterius dicunt quod E. M. nuper de H. præd. in Com. præd. Spinst. 7 die Augusti Anno Regni, &c. ac diversis aliis diebus & vicibus ante feloniam & murtherum præd. in forma præd. perpetravit, apud H. præd. in Com. præd. malitiose & felonice consuluit procuravit & abettavit præfat. A. P. murtherum præd. facere & ad interficiend. & murtherand. dictum Infantem contra pacem, &c. & in super quod J. O. de H. præd. in Com. præd. & K. O. de eadem Spinst. post murtherum & feloniam præd. in forma præd. fact. scientes præfat. A. P. murtherum & feloniam præd. fecisse & perpetrasse præfat. A. P. apud H. præd. in Com. præd. nono die Augusti Anno supradicti felonice receperunt & confortaverunt contra pacem, &c.

* If the Proposition de had been omitted, the Indictment had been ill. i Roll. Rep. 135.

Must.

Muster-Master commanding any Person to muster, and if the Person so commanded absents, not having a lawful Excuse; or if he comes, and doth not bring his best Arms, he is to be committed for Ten Days without Bail, unless he agree to pay 40s. as a Fine to the Queen.

Any

Any Person authorized to muster or levy Soldiers, taking any Reward to discharge or spare any from the Service, forfeits Ten Times as much.

A Captain, or other Officer, licensing a Soldier to depart, must pay him Wages then due, and Coat and Conduct Money, or forfeits Ten Times as much between Queen and Prosecutor, and to the Soldier Three Times as much as should be paid to him.

Justices of Peace may hear and determine these Offences, and upon Conviction of the Offender, may commit him without Bail till Forfeiture paid.

Mute.

THIS is of Two Kinds, { 1. When he answers not.
2. When he answers not directly.

In the one Case, it must be enquired, Whether he is Mute by the Act of God, or by Malice; if by the Act of God, then you must enquire of the Felony, and whether he is the same Person; if by Malice, then he shall have Judgment, and so he shall if he doth not answer directly.

To be mute in Treason, is a Conviction, and shall suffer as a Traitor. Dyer 241.

After Attainder, standing Mute, must be executed.

In Appeal, must be hanged.

But in Felony 'tis, that the Offender be remanded to Prison, and laid in a low and dark Room naked on the Ground, and on his Back, with his Arms and Legs extended by Cords, and Iron or Stone laid on his Body, something more than he can bear; next Day he shall have Three Morsels of Barley-Bread without Drink; the Third Day, he shall drink Thrice of the Water next the Prison, but not Running-Water, and shall have no Bread; and thus he shall be kept till dead, so that he die *Onere frigore & fame*; and besides this, he forfeits his Goods.

This must be understood, of such Felony for which he is not to have his Clergy; otherwise, if he is Mute he shall have Clergy. Moor 550.

Needle-Work, See Bone-Lace.

Pers, See Hunting, Partridges and Pheasants, Dogs, Fish.

News.

CONTRIVER, Speaker or Teller of false News, Lies, or other false Things, whereof Discord or Slander may arise, shall be committed till he find out the Author; and

E e

if

if he cannot find him out, then shall he be punished by the Advice of Counsel.

This is appointed by several Statutes, which are now of no Force. 3 Ed. 1. cap. 33. 1 & 2 Phil. & Mar. cap. 3. 1 Eliz. cap. 6. 23 Eliz. cap. 2.

Night-Walkers.

IF suspected to be of ill Fame, may be apprehended, (*viz.*) Such who sleep by Day, and haunt Bawdy-houses at Night, or keep suspicious Company; these may be compelled to find Sureties for Good Behaviour. 13 H. 7. cap. 10. *Popham* 208. *Latch.* 199.

They may be indicted at the Sessions. *Poph.* 208. *Bendl.* 199.

Noblemen. See Peers.

NOne are Noble under the Degree of a Baron.

A Warrant of the Peace is not to be granted against a Lord of Parliament, nor against a Duchsels, Countess or Baroness, for they have the same Privilege with Dukes, &c.

But this must be understood of those who are Noble by Creation or Birth; for if they are only Noble by Marriage, and the Husband dieth, and then they marry Gentlemen, they lose their Dignity.

Norwich.

NOne shall make Mats, Coverlets or Dornicks, in *Norwich*, unless licensed by Two Justices of that City; nor in *Norfolk*, but in Corporate Towns. 5 & 6 Ed. 6. cap. 24.

Norwich Stuffs, per 13 & 14 Car. 2. cap. 5.

Raym. 192. In an Information, this Statute was misrecited.

Number of
Wardens
and Assi-
stants.

IN *Norwich* and the County of *Norfolk*, there must be Twelve Wardens, and Thirty Assistants, who within Fourteen Days after they are chosen, and Notice thereof, must take an Oath

Oath before the Mayor faithfully to discharge their Office. If they refuse to be sworn, or die afterwards, and before the end of the Year, the Master-Weaver may chuse others.

Half of the Wardens are to be chosen on *Whit-Monday* by the greater Part of the Master-Weavers in the City then present: Half of the Assistance on the same Day by the greater Part of the Weavers of the County then present.

Seven of the Wardens and Assistants may meet when they please, or as often as desired by Eight of the Assistants.

Wardens of the City must give Personal Notice of Two of those in the County when they intend to meet, by setting such Notice upon the Door of their Sealing-hall Fourteen Days before.

Two of them may search in publick Places for Sale, and seize defective Yarns, and within Twenty Days afterwards bring them to a Trial by a Jury, which may impose Fines on the Yarns, not exceeding half the Value, to the Use of the Poor of the Trade.

Which being confirmed by the Mayor and Two Justices of the City, and Three of the County, (*Quorum unus*) shall be published Four Times in a Year, at Four Assemblies for Trade, and may impose Fines, not exceeding 10 s. for every Offence.

Being convicted by Oath of One Witness, or by his own Confession, before the Mayor or Justice of the Peace of the City or County, forfeits 40 s.

At their Four Assemblies for Trade, they are to Accompt before the Mayor and One Justice of the City, and Two of the County, for what Fines and Forfeitures they have received, and what they have laid out concerning the Trade, and what remains is by the said Mayor and Justices to be divided, as they shall direct between the Poor of the Trade of the City and County.

They must be Twelve Artificers, half of the City, and half of the County; they must be impannelled by Precept from the Mayor or Deputy; and if any being summoned refuse to appear, forfeits 5 s. to the Poor of the Trade.

All Stuffs, in which there is Wooll, must be under the Regulation of Wardens and Assistants, and must be brought to Weavers-Hall in *Notwich* before they are exposed to Sale; and if found good, then sealed; if defective, they must be tried by a Jury, &c. who may set Fines not exceeding half the Value of the Stuffs, for the Use of the Poor of the Trade, and detain them till paid, and sell them if not paid within Forty Days after Trial.

They in whose Possession unsealed Stuffs shall be found, forfeits 4 s. per Piece, and the Maker or Seller 4 s. for selling them unsealed, to the Use of the Poor of the Trade.

When they are to be chosen, and by whom.

Their Duty when chosen.

1. Concerning their Meeting.

2. Concerning their Searchings

3. Power to make By-Laws.

Punishment of those who disturb them.

When they are to Accompt.

Jury how to be impannelled.

Stuffs; sealing them.

Norwich Stuffs, &c.

If Wardens seal Stuffs which shall be found Defective by Jury, such Jury may set Fines on the Wardens of 40 s. for every Stuff; but Wardens shall have double Damages for unjust Vexation.

Persons convicted before the Mayor or Justice of the City or County, by Confession or Oath of Two Witnesses, of counterfeiting the Seal, or sealing therewith, or removing the Seal from one Piece to another, forfeits 20 l.

Every Person must have his proper Mark upon every Piece by him made, or forfeits 3 s. per Piece to the Poor of the Trade.

Forfeitures, &c.

Are to be levied by Distress, &c. by Warrant from Mayor or Justice, or by Action of Debt, Indictment or Information.

Yarns, Worsted.

Must be reeled on a Reel of a Yard about, and every Reel-
Stuff must have Leas——— 14.

Nuisance. See High-ways.

MEN may meet in a peaceable Manner, and with proper Instruments, to remove a Nuisance, but not in greater Numbers than are needful for that Purpose.

Upon an Indictment for a Nuisance, the Court never admits the Person to a small Fine till 'tis removed, and *Affidavit* made thereof, or else certified by Two Justices.

Neither ought the Defendant to take any Exceptions to the Indictment till he hath pleaded to it.

Oaks, See Wood and Leather.

Oaths.

AN Oath is an Affirmation or Denial of any Thing before one or more, who have Authority to give the same for the Advancement of Truth and Right, calling God to Witness that the Testimony is true; and 'tis called a Corporal Oath, because he toucheth the Scripture with his Hand.

There were Four Sorts of Oaths required of Subjects, to testify their Allegiance to the King.

The First was an Oath at Common Law, taken in the Court-Leet.

The Second was by Act of Parliament, 28 H. 8. cap. 7. which concerned the Supremacy.

The

The Third was *per Statute 1 Eliz. cap. 1.* which altered the Oath of Supremacy.

The Fourth was the Oath of Allegiance, *per Stat. 6 & 7 Jac.* and upon this last Act the Lord *Vaux* was indicted, he refusing to take the Oath, and being convicted on his own Conviction, had Judgment of *Præmunire*.

If an Oath be taken before a Magistrate who hath no Authority to administer, 'tis void; but if 'tis Voluntary and False, the Offender was punished formerly in the *Star-Chamber*; and if 'tis in a Spiritual Matter, *viz.* If a Woman swear to marry a Man, and doth not; she may be punished in the Ecclesiastical Court *pro lesione Fidei. Cro. Eliz. 469. Knight vers. Rushworth.*

Peers are sworn as Witnesses, in *Juramentum probationis*: But when they are Defendants, they answer upon their Honour. *Jones 154. the Earl of Lincoln's Case.*

The Oaths of Allegiance and Supremacy were enjoined by *1 Eliz.* and *3 Jac.* but are now abrogated by the Statute of *1 Will. & Mar. cap. 8.* and these Oaths enjoined:

I *A. B.* do sincerely promise and swear, That I will be faithful, and bear true Allegiance to Her Majesty Queen *ANNE.*

So help me God.

I *A. B.* do swear, That I do from my Heart abhor, detest, and abjure, as Impious and Heretical, that damnable Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of *Rome*, may be deposed by their Subjects, or any other whatsoever: And I do declare, That no Foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm.

So help me God.

Two or more Justices, *Quorum unus*, may send Warrants to Constables to summon any above Eighteen Years to take the said Oaths; which being lawfully tendred, and refused, the Offender may be committed to Gaol, or House of Correction for Three Months without Bail, unless he pay 40 s. or any lesser Sum the Person tendring shall think fit, to the Use of the Poor where the Offender did last reside.

If after the End of Three Months he still refuse, he shall be committed for Six Months, unless he pay 5 l. and under 10 l. and must be bound with Two Sureties to be of the Good Behaviour, and to appear at next Assizes, and there the Oath shall be tendred again in open Court, and if he

refuse, &c. shall be incapable of any Office, and be of Good Behaviour till he take the Oaths.

And if he refuse to subscribe the Declaration mentioned in the Statute of 30 Car. 2. cap. 1. shall be taken to be a Popish Recusant.

By 7 & 8 Will. cap. 27. If after 1 May 1696. any refuse to take the said Oaths when tendred, or to appear when summoned, shall be liable to the Penalties of Popish Recusant Convict.

Shall not give a Vote at the Election of Members for Parliament.

Persons
tendring.

May mitigate the Penalty of 40 s. per 1 Will.

By 7 & 8 Will. upon Refusal to swear, or to appear upon Summons, the Justice must enter in Parchment the Names and Abode of the Persons, &c. with the Time of the Tender, and certify it to Assizes or Sessions, who may certify it to the *Eschequer*, who may issue Process against Goods and Lands of the Offender.

Lawyers.

By the same Statute, 'tis a *Præmunire* for any Lawyer to practise after 25 May, 1696. not having before taken the Oaths, and made and subscribed this Declaration.

25 Car. 2.
cap. 2.

I A. B. do declare, That I do believe that there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever.

Parliament
1 Will. &
Mar. cap. 1.

Lords Spiritual and Temporal must not Sit or Vote before they take the said Oaths, and make and subscribe the Declaration mentioned, 30 Car. 2. cap. 1.

Two Justices out of the Sessions may tender those Oaths to any Person of 18 Years of Age or upwards, which stands convicted or indicted of *Recusancy*, or to those who have not received the Sacrament Twice in the Year before, &c. 3 Jac. cap. 4.

And now by a late Statute 'tis provided, That any Two Justices of the Peace (*Quorum unus*) may summon before them such Persons whom they shall suspect to be disaffected to the Government, and may tender the following Oath to him; and if he refuse to take it, then he must certify his Christian and Sirname, and Place of Abode, to the next Quarter Sessions, there to be recorded, which Record the Clerk of the Peace shall certify, either to the Court of *Chancery* or *Queen's Bench*, and there likewise to be recorded; and if the Person so refusing shall not at the next Term or Sessions, after such Refusal, appear in that Court where the Certificate shall be returned, and take and subscribe the said

said Oath, he shall be adjudged a Popish Recusant Convict, and shall forfeit such Penalties as such a Recusant ought to do.

The Oath to be taken by every Person who shall be admitted to any Office, Civil or Military, within Three Months after his Admittance, &c.

I W. N. do truly and sincerely Acknowledge, Profess, Testify and Declare in my Conscience, before God and the World, That our Sovereign Lady Queen *Anne* is lawful and rightful Queen of this Realm, and of all other Her Majesty's Dominions, and Countries thereunto belonging, &c.

A Certificate for one who hath taken the Oaths, and subscribed the Declaration, 1 Will. &c. cap. 8.

Middl. ss. **T**Hese are to certify, That R. B. of the Parish of H. in the County aforesaid, Esq; came before Her Majesty's Justices of the Peace at the Sessions held at H. &c. on *Thursday, &c.* and then and there before the said Justices at the said Sessions, did take the Oaths mentioned in a Statute made in the First Year of the Reign of the late King *William* and Queen *Mary*, Entituled, *An Act for the abrogating the Oaths of Allegiance and Supremacy, and appointing other Oaths*; and did likewise then and there make and subscribe the Declaration mentioned in a Statute made in the 25th Year of the Reign of the late King *Charles* the Second, Entituled, *An Act for preventing Dangers which may happen from Popish Recusants*; and that what he did then and there concerning the Premises, is registred according to the Direction of the Act first above-mentioned. Signed, &c. Dated, &c.

Mittimus for refusing, &c. and not paying the 40 s.

To the Keeper, &c.

Sussex ss. **W**E H. P. and W. N. two of Her Majesty's Justices of the Peace for the County aforesaid, whereof one is of the *Quorum*, do, by this our Warrant, commit to your Custody the Body of J. O. of, &c. for refusing to take the Oaths mentioned in a Statute made in the First Year of the Reign of the late King *William* and Queen *Mary*, Entituled, *An Act for abrogating, &c.* which said Oaths were lawfully tendered to the said J. O. and for that he hath refused

refused to pay the Sum of 40 s. to the Poor of the Parish of H. where the said J. O. did last reside, according as appointed by the said Act, requiring you the said Keeper to receive the said J. O. into your Custody, and him safely to keep without Bail or Mainprize for the Space of Three Months; and for so doing, this shall be your Warrant. Given under our Hands and Seals, &c.

Dissenters are bound to take the Oaths above-mentioned, and to subscribe the Declaration mentioned 30 Car. 2.

Justices in Sessions are to tender and administer the Oaths to Persons who shall offer themselves.

Those Dissenters who scruple taking any Oaths, must make and subscribe a Declaration of Fidelity, and likewise a Profession of their Belief. 1 Will. &c. cap. 18.

The Declaration of Fidelity.

I A. B. do sincerely promise, and solemnly declare, before God and the World, That I will be true and faithful to Queen Anne; and I do solemnly profess and declare, That I do from my Heart abhor, detest and renounce, as impious and heretical, that damnable Doctrine and Position, That Princes excommunicated or deprived by the Pope, or any Authority of the See of Rome, may be deposed or murdered by their Subjects, or any other whatsoever: And I do declare, That no foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Power, Jurisdiction, Superiority, Pre-eminence or Authority, Ecclesiastical or Spiritual, within this Realm.

The Profession of Belief.

I A. G. profess Faith in God the Father, and in Jesus Christ the Eternal Son, the true God and the Holy Spirit, one God blessed for evermore, and to acknowledge the Holy Scriptures of the Old and New Testament to be given by Divine Inspiration.

They must likewise make and subscribe the Declaration mentioned in the Statute of 30 Car. 2. cap. 1.

Any Justice of Peace may at any Time require a Dissenter to make and subscribe Declarations, and to take the Oaths or Declaration of Fidelity. If he scruple the taking any Oath,

Upon Refusal, may commit him to Prison, without Bail, and certify his Name in the next Sessions, where he resides.

If the Person committed shall, upon a second Tender at the Sessions, refuse, &c. it shall be recorded, and he shall be then taken for a Popish Recusant convict.

Every Contributor having an Annuity for Life or Lives, &c. and his or her Executors demanding Money, must either produce a Certificate of the Life of the *Nominee*, signed by the Minister or Church-wardens of the Parish; 5 & 6 W. & M. cap. 11.

Or make Oath of the Life of such *Nominee* upon the Day of Payment, before one or more Justices of the County, City or Town, where such Person at the Time of the making Oath shall reside.

| | |
|--|---|
| 1. Bailiff of a Liberty. | Of Crown-side. |
| 2. Bailiff attending Jury. | Of <i>Nisi prius</i> . |
| 3. Clerk of the Peace. | Of Matrons. |
| 4. Church-warden. | On Traverse. |
| 5. Constable High. | Justice of Peace. |
| 6. Constable High, delivering Presentment. | 14. Peace. |
| 7. Constable Petty. | 15. Prisoner not worth 10 l. &c. |
| 8. Constable of London, &c. | 16. Sewers. |
| 9. Examination of Witnesses. | 17. Under-Sheriff. |
| 10. Exciseman. | 18. Wit-
nesses, { On an Indict-
ment. |
| 11. Information. | { On Crown-side. |
| 12. Inquest Grand. | { On <i>Nisi prius</i> . |

I. Oath of a Bailiff of a Liberty.

I T P. do swear, That I will not use or exercise the Office of a Bailiff of the Liberty of, &c. corruptly, during the Time I shall remain therein; neither will I accept, receive, or take by any Colour, Means or Device whatsoever, or consent to the taking any manner of Fee or Reward of any Person for impannelling or returning any Inquest, Jury or Tales, in any Court of Record for the Queen, or between Party and Party, above 2 s. or the Value thereof, or such Fees which are allowed and appointed for the same by the Laws and Statutes of this Realm; but will, according to my Power, truly and indifferently, with convenient Speed, impanel all Jurors, and return all such Writ or Writs touching the same, as shall appertain to be done by my Duty or Office, during the Time I shall remain in the said Office.

So help me God.

27 Eliz. cap. 12. Two Justices, *Quorum unus*. Oaths, 1 W. cap. 18. must also be taken, or he forfeits 40 l.

The Penalty is to be divided between the Queen and Prosecutor; and Justices in Sessions have Power to hear and determine, and to award Process.

2. Of

2. *Of a Bailiff who attendeth on a Jury.*

YOU shall well and truly keep together every Person sworn of this Jury, in some convenient Place, without Meat, Drink, Fire, Candle or Lodging; You shall not suffer any Person to speak unto them until they are agreed in their Verdict.

So help you God.

3. *Of a Clerk of the Peace in Sessions, before he enters upon his Office.*

1 W. & M.
cap. 21.

I W. W. do swear, That I have not, neither will I pay any Sum or Sums of Money, or other Reward whatsoever, or given any Bond or other Assurance to pay any Money, Fee, or Profit, directly or indirectly, to any Person or Persons whatsoever, for nominating or appointing me to be Clerk of the Peace of the County of S.

So help me God.

4. *The Oath of the Church-warden.*

YOU shall execute the Office of a Church-warden in the Parish where you are chosen for this ensuing Year, according to your Skill and Discretion in Her Majesty's Laws Ecclesiastical now in Force.

So help you God.

5. *Of a Constable.*

YOU shall well and duly, according to your Knowledge, Power and Ability, execute the Office of a Constable, so long as you shall continue in that Office.

So help you God.

6. *Of a High-Constable, when he delivers in his Presentments.*

YOU shall true Presentment make to the Grand Inquest, of all Offences and Misdemeanours done or committed within your Hundred, and which are in any wise come to your Knowledge, and belonging to you, to Present without any Concealment.

So help you God.

7. *Of*

7. Of a Petty-Constable or Headborough.

YOU shall swear well and truly to execute the Office of a Constable for the Parish of H. for the Year next ensuing, and until another shall be sworn in your Room, or until you shall be lawfully discharged from the said Office.

So help you God.

8. London Constable.

YOU shall swear to keep the Peace of the Queen, according to your Power; and you shall arrest all them, who make any Contest, Riot or Affray, in the breaking the said Peace, and commit them to the Comptor of one of the Sheriffs; and if you are withstood by Strength of Misdoers, you shall raise on them an Out-cry, and pursue them from Street to Street, and from Ward to Ward, till they be arrested; and you shall search, when required by the Scavengers or Beadles, for common Nuisances of your Ward; and you shall help the Beadle and Raker to collect the Salary, if you be thereunto required; and if any Thing be done within your Ward against the Ordinances of this City, such Defaults as you shall find there done, you shall present to the Lord Mayor and other Magistrates thereof; and if you are hindered by any Person in the Execution of your Office, you shall certify the Name or Names of him so doing to the Lord Mayor of this City; you shall also, during the Time you shall be in the Office and Place of a Constable, once at least for every Month, certify and shew to one of the Clerks of the Mayor's Court, as well the Names as Surnames of all Freemen within the Parish wherein you inhabit, as the Names and Surnames of all the Children of the said Freemen dying, being Orphans of this City.

So help you God.

Coroner.

YOU shall swear, That you will truly serve the Queen and Her People in the Office of a Coroner, and as one of Her Majesty's Coroners of this County of S. and therein you shall diligently and truly do all Things appertaining to your said Office, according to the best of your Knowledge and Power, both for the Queen's Profit, and the Good of the inhabitants within the said County, taking such Fees as you ought by Law.

So help you God.

9. *To a Witness upon his Examination.*

YOU shall true Answer make to all such Matters as shall be demanded of you, concerning, &c. You shall speak the Truth, the whole Truth, and nothing but the Truth.

So help you God.

10. *Of an Excise-Man and Gauger.*

12 Car. 2.
cap. 23.
2 Justices;
they must
certify the
taking this
Oath next
Sessions.

YOU shall swear to execute the Office of, &c. faithfully and truly, without Favour or Affection; and shall make and deliver a true Account from Time to Time, to such Person or Persons as Her Majesty shall appoint to receive the same, and shall take no Reward or Fee for the Execution of the said Office, from any other Person than from Her Majesty, or those whom Her Majesty shall appoint in that behalf.

So help you God.

He must also at the same time take the Oaths of Allegiance and Supremacy, per 1 Will, cap. 8.

11. *An Information against a Criminal.*

THE Information which you shall give on the Behalf of our Sovereign Lady the Queen, against J. O. of, &c. shall be the Truth, the whole Truth, and nothing but the Truth.

So help you God.

12. *Jury Grand.*

YOU, as Foreman of the Grand Inquest for the Body of this County of S. shall diligently inquire, and true Presentment make, of all such Matters and Things which shall be given to you in Charge of Her Majesty's Council; your Fellows and your own you shall keep secret; you shall not present any Person for Envy, Hatred or Malice, nor conceal any Truth for Fear, Favour, Affection, Reward, Gain or Hope; but you shall in all Things, to the best of your Skill and Knowledge, present the Truth, the whole Truth, and nothing but the Truth.

So help you God.

The rest of the Jury by Three.

THE same Oath which J. L. your Foreman, hath taken on his Behalf, you and every of you shall well and truly observe and keep on your Parts.

So help you God.

13. *Jury*

13. Jury of the Crown-side.

YOU shall well and truly try, and true Deliverance make, between our Sovereign Lady the Queen, and the Prisoners at the Bar, whom you have in your Charge, and a true Verdict give according to your Evidence.

So help you God.

Jury of Nisi Prius.

YOU shall well and truly try this Issue of *Nisi Prius* between the Parties, according to your Evidence.

So help you God.

Jury of Matrons.

YOU the Forewoman of this Jury shall swear, That you shall search and try the Prisoner at the Bar, whether she be quick with Child of a living Child; and thereof a true Verdict give according to the best of your Judgment.

So help you God.

Jury on a Traverse.

YOU shall well and truly try this Issue of Traverse between our Sovereign Lady the Queen, and J. O. for a Trespass, whereof he stands indicted according to your Evidence.

So help you God.

The Oath of a Justice of Peace.

YOU shall swear, That as a Justice of Peace for the County of S. in all Articles in the Queen's Commission to you directed, you shall do equal Right to the Poor and Rich, after your Cunning, Wit and Power, and after the Laws and Customs of this Realm, and Statutes thereof made; you shall not be of Council with any Person in any Quarrel depending before you; and that you hold your Sessions after the Form of the Statutes thereof made, and the Issues, Fines and Amerciaments that shall happen to be made; and all Forfeitures which shall fall before you, you shall cause to be entred without Concealment or Imbezelling, and truly send them to the Queen's Exchequer: You shall not take for Gift or other Cause, but well and truly you shall do the Office of a Justice of the Peace in that behalf, and that you take nothing for your Office of Justice of the Peace to be done, but of the Queen, and Fees accustomed, and Costs limited

18 Ed. 3.
cap. 3.

limited by the Statute: You shall not direct, nor cause to be directed, any Warrant (by you to be made) to the Parties, but you shall direct them to the Bailiffs of the said County, or other the Queen's Officers or Ministers, or other indifferent Persons, to do Execution thereof.

So help you God.

14. *Peace, requiring Security thereof.*

YOU shall swear, That you do not crave the Surety of the Peace against J. O. for any Hatred or Malice which you bear unto him, but for Safety of your Person from Harm, and to preserve your Life, House, Goods and Chattels from Mischief, which you fear he will do, or procure to be done unto you or them.

So help you God.

15. *Oath of a Prisoner not worth 10 l.*

One Justice,
22 & 23
Car. 2.
cap. 20.
30 Car. 2.
cap. 4.

I R. M. do, upon my corporal Oath, solemnly profess and declare before Almighty God, That I have not any Estate, Real or Personal, in Possession, Reversion, or Remainder, of the Value of 10 l. in the whole, or sufficient to pay the Debt or Damages for which I am imprisoned; and that I have not directly or indirectly sold, leased, or otherways conveyed, disposed of or intrusted, all or any Part of my Estate, thereby to secure the same, to receive or expect any Profit or Advantage thereof, or deceive any Creditor or Creditors whatsoever to whom I stand Indebted: And that I was actually a Prisoner within the Prison of M. &c. at the Suit of, &c. and have so continued to this Day, and that I have not had the Liberty of the Rules of the said Prison.

So help, &c.

Before a Justice of Peace makes an Order for Discharge of a Prisoner for Debt, he shall cause the Gaoler to come before and administer this Oath.

Oath of the Prisoner, per Stat. 2 Will. cap. 15. before he can be discharged.

Before the
Justice he
took the
first Oath.

I J. O. do swear, That on the 18th Day of November, 1690. I was actually a Prisoner in the Custody of the Gaoler of &c. in the County of, &c. at the Suit of W. C. without any Consent or Procurement, or by any Fraud or Collusion whatsoever.

So help me God.

Oath

Oath of the Gaoler, by the Stat. of 5 & 6 Will. cap. 2.

I A. L. do swear, That I have examined the Commitment or Books belonging to the Prison of, &c. and that by them it doth appear, that J. O. was really and truly a Prisoner in the Custody of the then Gaoler or Keeper of the Prison of, &c. in the County of S. without any Fraud or Deceit by me, or any other to my Knowledge or Belief, at or upon the 28th Day of November, Anno Dom. 1690.

So help me God.

16. Oath of a Commission of Sewers.

YOU shall swear, That you to your Cunning, Wit and Power, shall truly and indifferently execute the Authority to you given by this Commission of Sewers, without any Favour or Affection, Corruption, Dread or Malice, to be born to any Person or Persons; and, as the Case shall require you, shall consent, and endeavour your self, for your Part, to the best of your Knowledge and Power, to the making such wholesome, just, equal, and indifferent Laws and Ordinances as shall be made and devised by the most discreet and indifferent Number of your Fellows, being in Commission with you, for the due Redress, Reformation, and Amendment, of all and every such Things as are contained and specified in the said Commission, and the same Law and Ordinances, to your Cunning, Wit and Power, cause to be put in due Execution, without Favour, Malice or Affection.

*By dedi-
mus, or be-
fore Justices
in Sessions.*

So help you God.

17. Under-Sheriff, See Bailiff of Liberty.

(18.) Witness on an Indictment to Grand Jury.

THE Evidence which you shall give to the Grand Inquest, upon this Bill of Indictment against J. O. shall be the Truth, the whole Truth, and nothing but the Truth.

So help, &c.

To Witnesses on Crown-side.

THE Evidence which you shall give to this Inquest against J. O. the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth.

So help, &c.

To

To Witnesses at Nisi Prius.

THE Evidence which you shall give to this Inquest, concerning the Matters in Variance, shall be the Truth, and nothing but the Truth.

So help you God.

The next Justice of Peace may give an Oath to every Officer present at the Trial of an Offender, by a Court-Marshall, before any Proceeding thereon, where the Criminal may be punished by Death.

To an Officer at a Court-Marshall.

2 W. & M.

YOU shall well and truly try and determine, according to your Evidence, the Matter now before you, between our Sovereign Lady the Queen, and the Prisoner to be tried.

So help, &c.

Oathes. See Hedge-breakers.

Barking Fruit-Trees, forfeits treble Damages to the Party grieved, and 10 l. to the Queen; the Damages to be recovered in an Action of Trespas. 37 H. 8. cap. 6.

Ordinary,

IS not bound to attend at the Sessions; and when he doth attend, he is not Judge *an legit ut Clericus vel non*; for if he say that the Person can read, when he cannot, the Court may hear him; and if he cannot read, the Offender shall be hanged, and the Ordinary fined for his Misbehaviour.

A Felon may have the Clergy allowed at the Gallows, tho' he hath failed to read, and is adjudged to be hanged; which shews, that the Presence of the Ordinary is not always necessary where Clergy is allowed.

The Court may likewise, in Strictness of Law, allow Clergy, tho' the Ordinary or his Deputy do not attend.

Overseers of the Poor. Vide Poor.

Outlawry.

Outlawry. See Addition.

THis is when a Man is called into Law, and doth not appear upon Three Writs issued against him, which being directed to the Sheriff with a *non est inventus*, then there is a Writ called the *Exigent*, directed to the Sheriff to proclaim the Man that is to call him in Five County-Courts which are held once a Month, charging him to appear, which if he did not, then he was *Exlex*; that is, deprived of the Benefit of the Law, and out of the Queen's Protection.

This Punishment seems to be derived from the old British Priests called *Druids*, who sat as Judges here; and if any Person made Default in appearing before them, he was forbidden their Sacrifices, and then no Man would either speak to him, or come near him for fear of being infected; and besides he was to have no Benefit of the Law.

It was so great a Punishment, that in After-ages no Man was outlawed but for Felony; and then the old Writers tell us, That the Person had *Caput Lupinum*, that is, he carried his own Judgment in his Face, for he might be killed as a Wolf; and this so continued till the Reign of Ed. 3. and then it was made lawful for the Sheriff only to kill him, but not without a Warrant to do it.

But now Outlawries are become frequent in Personal Actions, the Effect of which is, (*viz.*) Forfeiture of Goods and Chattels to the Queen; and if for Felony, then 'tis Forfeiture of his Lands in Fee, or for Life, and his Goods, &c.

It was a Question, Whether a Man outlawed for Felony might be taken in Execution at the Suit of a Creditor, because he being attainted by the Outlawry, his Goods are forfeited to the Queen, and his Body is at Her Disposal; but it was held, that he is subject to such Execution, but the Sheriff may chuse whether he will execute it or not, and that if the Law should be otherwise, then the Party might take Advantage of his own Fault, for he might suffer himself to be outlawed, and then get a Pardon, and deceive all his Creditors.

A Man was outlawed for Murder, who held Lands of the Queen, which she seized and gave to another; the Outlawry was reversed, and the Question was, Whether the Person might re-enter, or first Petition to the Queen; and it was held that he might re-enter on her Grantee, because there was no Record of Attainder to put him on his Petition. 1 And. 188.

Error to reverse an Outlawry for Murder, the Error assigned was, That *tempore promulgationis Utlagaria & dis antea & post* he was beyond Sea; it should be *tempore* of the Exigent

Outlawry. Pardon.

gent awarded ; for if he depart after that Time, and is then outlawed, he shall never reverse that Outlawry, because he fled from Justice, *destinato Consilio* ; but the Attorney-General confessing the Error, it was reversed.

Papists, See Heretics.

Pardon.

Pardon is either, $\left\{ \begin{array}{l} (1.) \text{ Of Course :} \\ \text{or,} \\ (2.) \text{ Of Grace.} \end{array} \right.$

Pardon of Course, is where a Man is convicted of Murder, or *Se defendendo* ; which see in *Chance-medly in Homicide*.

Pardon of Grace is either, $\left\{ \begin{array}{l} (1.) \text{ General :} \\ \text{or,} \\ (2.) \text{ Particular.} \end{array} \right.$

General Pardons have now so many Qualifications and Exceptions, both as to Offences and Persons, that the Court cannot take Notice of them without being pleaded ; and in the Plea the Defendant must aver, That he is none of the Persons excepted : A Form of which Plea you may see, 3 *Inst.* 234.

Moor 752.

By the Statute of 13 R. 2. *cap.* 1. 'tis enacted, That the Offence shall be specified in the Pardon, otherwise it shall not be allowed. Before the making that Statute, a Pardon of all Felonies was good for Murder ; but since it hath been held, That a General Pardon for Murders or Robberies is not good, without reciting the Indictment and Verdict in the Pardon it self. *Sid.* 366, 430.

Dyer 30.

Anno 31 H. 8. It was made Treason for a Wife to poison her Husband. The very next Year this Fact was committed by a Woman, and she was pardoned ; her Son brought an Appeal of Murder, and it was adjudged that it did not lie ; because the Offence being made *Treason*, could not be punished as *Murder*, for the greater Crime drowns the less : But this seems to be a very odd Reason, that the Alteration of the Punishment should change the Nature of the Offence ; for tho' it was newly made Treason, yet it was Murder still.

Cro. Eliz.
814.

In Cases of *Treason*, the Court may allow a Pardon without a Writ of Allowance, but not so in Felony ; and therefore where

where a particular Pardon is pleaded, it must be *sub Sigillo*, and it ought to have a Writ of Allowance; but a Clause of *No. obstante* dispensed with that Writ.

One Cole was convicted of Burglary and pardoned, *ita* Moor 466. *quod bene se gesserit* towards all People: Afterwards he broke the Peace by beating another Man, and this being suggested to the Court, Execution was prayed against him; and the Clerk of the Crown informed the Court, That one Whidden was hanged in the Queen's Reign for the same Cause after a Pardon.

I do not find any Rule made in the principal Case: I shall mention the Case of Sir Walter Rawleigh, because it was an extraordinary one. He was attainted of Treason, *Anno 1 Jac.* and was kept Prisoner in the Tower Twelve Years; then the King gave him a Commission to go into Guinea, and Authority to execute Martial Law and Power over the Lives of other Men. He went thither, and upon his Return was committed again to the Tower, and brought to the Bar, and had Sentence and Execution upon the Attainder, though he insisted that his Commission giving him Power over the Lives of other Men, was a Pardon by Implication; but the Court answered, That no Man must be pardoned but by express Word, and not by Implication. 2 Cro. 495.

A Pardon doth not only take away *penam*, but *reatum*; so that a Man is restored to his Credit, and enabled to be a Witness, tho' he hath been convicted of Felony; but it seems otherwise if the Conviction had been for Perjury, because it would be an Injury to the People in general to make them subject to the Testimony of such a Person. 1 Vent. 349.

Witness.

A Conviction of Felony, and burnt in the Hand, this is in the Nature of a Pardon; for by this Punishment he is cleared of the Offence, and is become a lawful Witness. Raym. 370.

On the Twelfth of February a mortal Stroke was given, the Person died the Eighteenth of June following; in the same Year there was a General Pardon, by which all Offences, Misdemeanours and Felonies, before and until the Fourteenth of February, were pardoned: It was adjudged, That the Stroke being before the Pardon, tho' the Death ensued afterwards, the Offender should be discharged, because the Stroke was the Offence, and that was pardoned; so that all the Consequences of that Offence were likewise discharged. Plowd Com. 401. 4 Rep. 42.

Till an Inquisition is found, nothing vests in the Queen, and therefore a Pardon before an Inquisition found, discharges all Forfeitures. 2 Mod. 53.

But where once an Interest is vested, a Pardon will not operate upon the Goods forfeited, without some Words of Restitution. *Sid.* 158.

Pardon is no Bar to an Appeal, nor to an Execution, if the Offender be attainted and pardoned of Felony only.

Some Persons convicted of Capital Offences, have been thought fit to be reprieved from Execution, in order to obtain a Pardon, as fit to serve the Queen either in the Army or Navy, but have been continued in Prison a long Time in Expectation of passing such Pardon under the Great Seal, and some Time is taken up in the pleading and allowing it in the usual Form of Law: Therefore by a late Act, as soon as the Judge receives a Warrant under the Sign-Manual of the Queen for a Pardon, he may direct his Warrant to the Sheriff or Gaoler, directing the immediate Delivery of such Prisoner out of Custody, to such Officer under whom he shall be listed; and the Pardon, when passed, shall be entered and enrolled.

2 & 3 Ann.

Parliament.

TWO Justices in *Wales* may tax every City and Borough in the Twelve Counties, and in *Monmouthshire*, towards Wages of Burgesses, &c. 35 H. 8. cap. 11.

Pasture.

HE who keepeth 120 Sheep on his several Pastures which is fit to depasture Milch-Cows, and which is not Common, shall, for every Sixty Sheep, keep one Milch-Cow; and for every 160 Sheep, shall rear one Calf: Penalty is 20*s.* per Month for not keeping a Cow, and 20*s.* for not rearing a Calf; one Half to the Queen, the other to the Party who prosecutes within a Year after the Offence.

Justices in Sessions have Power to hear and determine the said Offences. 1 & 2 Phil. & Mar. cap. 3.

Made perpetual, per 13 Eliz. cap. 25. 7 Jac. cap. 8.

There was a Complaint made to the Parliament, *Ann.* 25 H. 8. That the Rich Men in these Days hired many Farms, and converted them from Tillage to Pasture, which impoverished the ordinary People; and this was occasioned by the great Profit arising by Sheep, insomuch that some Men had 24000 Sheep of their own fed upon these Farms, and increased the Price of a fat Sheep from 5*s.* 4*d.* to 6*s.*

This

This was the Reason of making a Law, That no Man should keep in his Possession, at one Time, above 2000 Sheep, to be accounted after the Rate of Six Score to the Hundred; the Penalty is 3 s. 4 d. for every Sheep above that Number.

The Prosecution must be within a Year after the Offence, and it may be before Justices in Sessions, and the Penalty is to be divided between the Queen and Prosecutor.

But a Person might keep as many Sheep as he could upon Lands of his own Inheritance, or as Tenant in Dower, or by the Courtresie.

And because Questions might be made what should be accounted Sheep; therefore it was provided, that Lambs should not be so accounted till *Midsummer* Twelve-month after their Fall.

Likewise, if any Person had more than 2000 Sheep, either as Executor, or by express Devise, or by Marriage, they should not incur this Penalty, so as within one Year afterwards they put off as many as would reduce the Number to 2000 at the end of the Year.

Also an Infant who had above that Number devised to him, could not be punish'd during his Nonage, or any Person for him.

In that Act there is likewise a Clause, that no Man shall take above Two Farms, except he dwell in the same Parish where his Farms are, under the Penalty of 3 s. 4 d. per Week between the Queen and Prosecutor; but this must be at the Assizes, and not at the Sessions.

Any Person may seize great Cattle and Sheep brought from *Scotland* into *England*, *Ireland* or *Wales*, until such Time as the Successions to the Crown of *Scotland* shall be declared and settled by Act of Parliament there, in the same Manner as 'tis settled in *England*; for till that Time, all such Cattle or Sheep brought from thence are forfeited to him who seizes, or will sue for the same, and likewise the Value of such Cattle, one Third Part of which Value is for the Queen, and the other Two Thirds to him who will sue for it.

3 & 4 An-
naz.

The Cattle thus seized, may be detained Four Days, and if the Owner doth within that Time make it appear upon Oath of Two credible Witnesses before one Justice, that they were not brought from *Scotland* after *December 25. 1705.* then the Justice by his Warrant may cause them to be delivered.

And if any *English* Cattle or Sheep shall with the Privy of the Owner, or any other Person employed by him, be mixed with such *Scotch* Sheep or Cattle, and seized with them, in such Case they shall all be taken to be *Scotch* Cattle, and disposed as aforesaid; and if any Persons wilfully agree and

conspire to evade the Seisures, then upon an Indictment within a Year after the Offence and Conviction, the Forfeiture is 100*l.* to be recovered, and distributed as above mentioned.

Indictment for pulling Wool from live Sheep.

Suffex ff. Jur', &c. quod J. O. nuper de H. in Com' Suffex prædict' Pastor, 18 die Maii, Anno, &c. clausum R. B. apud H. prædict' in Com' prædict' fregit & intravit ac lanam viginti ovium valoris viginti Solidorum de bonis & catallis prædict' R. B. apud H. prædict' in Com' prædict' à corporibus ovium prædict' attunc & ibidem existen' expilabat, & lanam prædictam sic expilatam felonice cepit & asportavit contra Pacem dictæ Domine Regine Coron' & Dignitat' suas, &c.

Partridge. Vide Fowl in Bail.

THE first Statute made to prevent killing of Partridges, was Anno 11 H. 7. cap. 17. by which 'tis enacted, That no Person of what Condition soever shall take or cause to be taken any Partridges or Pheasants upon the Freehold of another without his Assent, or without the Leave of the Possessor thereof, upon Pain of forfeiting of Ten Pounds, one Moiety to the Prosecutor, the other to the Owner or Possessor of the Ground.

The Recovery is to be by Action of Debt, Bill or otherwise; and likewise the Justices of Peace have Power to hear and determine as well by Inquisition, as Information and Proofs.

I find a Precedent of an Action of Debt brought upon this Statute, which I think is not improper to transcribe, though it doth not relate to a Justice of Peace.

Suffex ff.

Raft. Ent.
599.

J. O. sum' fuit ad respondend' R. B. &c. de placito quod reddat ei decem Libras quas ei debet & injuste detinet, & unde idem R. B. per B. H. Attorn' suum dicit quod cum in Statuto in Parlamento Domini Henrici nuper Regis Angliæ septimi post Conquestum apud Westm. Anno Regni sui undecimo ten' & edit' inter cetera continetur quod nulla persona cujuscunque gradus sine condition' fuerit capiat aliquos Phasianos vel Perdices in retibus aut aliis ingenis super solo & possessione alicujus alterius persone sine speciali licentia ejusdem possessoris sub paina forisfactura decem Librarum una medietas ad usum cujuscunque qui in hac parte sequi voluerit per Action' debiti, altera medietas ad usum possessoris ejusdem soli in quo Phasiani vel Perdices illi capti fuerint prout in eodem Statu-

Statuto plenius continetur prædict' tamen J. O. Statutum prædict' minime ponderans 14 die Augusti, Anno Regni Domine Regine, &c. quinq; Phasianos super solo ipsius R. B. apud H. in Com' prædict' retibus sine licentia ipsius R. B. cepit & asportavit per quod actio accrevit eidem R. B. ad exigend' & habend' de præfat' J. O. prædict' 10 l. prædict' tamen J. O. licet sepius requisit' prædict' 10 l. eidem R. B. nondum solvit, &c. ad dampnum quinquæ Librarum & inde produc' sectam, &c.

The next Statute was Anno 23 Eliz. by which killing or taking of Partridges or Pheasants in the Night-time with Nets, &c. forfeits for every Partridge 10 s. and for every Pheasant 20 s. which if not paid in Ten Days after Conviction, the Offender must be committed one Month without Bail; and besides such Forfeiture and Imprisonment, must enter into Recognizance before one Justice, &c. with Two Sureties to appear at the next Sessions, &c. and being there convicted, must give Bond with Two Sureties to be taken by one Justice not to offend in the like Nature for Two Years.

23 Eliz.
cap. 10.

Forfeiture to be divided between the Lord of the Manor and Prosecutor; but if the Lord will not take it, then between the Prosecutor and the Poor; one Moiety to be recovered by the Church-wardens, &c.

A Man was indicted on this Statute for taking Partridges *cum Retibus*; it was quash'd, for it should be *cum Retibus*.

3 Bull. 178.

The next Statute was Anno 1 Jac. by which Shooting at Partridges or Pheasants, or taking, killing or destroying them with Setting-Dogs or Nets, or other Instruments, or taking or breaking the Eggs in the Nests, shall be committed for Three Months without Bail for every Offence, unless he pay immediately upon his Conviction to the Church-wardens of the Parish where the Offence was committed, or where the Offender was apprehended, for every Pheasant 20 s. to the Use of the Poor, &c. for every Partridge 10 s. &c. but after he hath been committed one Month, he may be discharged, if he will enter into a Recognizance with Two Sureties in 20 l. each, That he shall not at any Time afterwards offend in the like Nature.

1 Jac. c. 27.

Selling, or buying to sell, Partridges or Pheasants, forfeits for every Partridge 10 s. Pheasant 20 s. one Moiety to the Prosecutor, the other to the Poor.

Justices in Sessions, or Two Justices out of Sessions, have Power to hear and determine these Offences, and to administer an Oath, &c.

By this Statute, the Conviction was to be by Confession of the Party, or Oath of Two Witnesses before Two Justices, and the Recognizance was also to be taken by Two Justices.

* But per
7 Jac. c. 11.
tis 20 s.
for every
Partridge,
being con-
victed by
one Wit-
ness upon
Oath be-
fore two
Justices, if
taken be-
tween the
first of Ju-
ly and last
of August.

But by a subsequent Statute, the Conviction may be by *One Witness* before Two Justices, for taking, killing or destroying them with *Setting Dogs and Nets*, or with any Manner of Engine, and the Recognizance may be taken by one or more Justices, &c. where the Offence was committed.

By this Statute, the Qualifications of Persons to take Partridges, &c. were altered.

A Lord of a Manor, a Freeholder of 40 *l. per Annum* either in his own or in his Wife's Right, a Leaseholder of 80 *l. per Annum* for Term of Life or Lives, or worth 400 *l.* in Goods, may kill Partridges in *Day-time* in their own Grounds.

Constable by Warrant from Two Justices may enter Houses of Suspicious Persons, and take or kill their Dogs, and cut or carry away their Nets, as forfeited to the Constable.

And by another Statute; If a Constable find any Partridges in such a House, he shall bring the Offender before a Justice, and if he cannot produce the Person of whom he bought it, or some credible Witness to make Oath of the Sale thereof, he shall be committed by the Justice of killing it, &c. and forfeits for every Partridge, &c. 5 *s.* and not exceeding 20 *s.* one Moiety to the Informer, the other to the Poor, &c. to be levied by Distress, &c. and if that cannot be taken, then he must be committed to the House of Correction for any Time not exceeding one Month, and not less than ten Days.

Keeping Setting-Dogs, Nets or Tunnels, not * qualified, and being convicted before one Justice upon Oath of one Witness, is subject to the like Penalties.

No *Certiorari* to be allowed, unless the Offender before Allowance become bound to the Prosecutor in 50 *l.* with Sureties, to be approved by one or more Justices before whom the Offender is convicted, to pay the Prosecutor full Costs upon Oath within one Month after Conviction is confirmed, is *Procedendo* granted.

An Indictment for taking of Partridges, &c. without Licence.

Suffex ff. *Ur*, &c. quod J. O. de H. in Com' predi^{ct} Yeoman, 14 die Augusti, Anno Regni, &c. apud H. predi^{ct} in quodam loco ibidem vocat. W. qui quidem locus tunc fuit & adhuc est liberum tenementum R. B. de H. predi^{ct} Ar' & nunquam fuit Warrena ipsius J. O. propria sex Phasianos & viginti Perdices cum quibusdam reticulis & aliis ingeniis valoris quinque Solidorum tunc ibidem cepit, occidit & asportavit sine aliquo consensu, agramento aut speciali licentia predi^{ct} R. B. in hac parte prius habi^t

* Not having Inheritance of 100 *l. per Ann.* or for Life, nor Lease for ninety nine Years of 150 *l. per Ann.* other than the Son and Heir of an Esq; 22 & 23 Car. 2. 25.

vel obtent' in dicta Domina Regina nunc contemptum & contra formam Statuti in hujusmodi casu edit' & provis', &c. 3 Bullst. 178.

Peers.

WHat I shall mention under this Title doth not concern the Office of a Justice of Peace, yet I think 'tis not improper to give a short Account of the Trial of a Peer by Peers.

It must be upon an Indictment at the Suit of the Queen; and tho' a *Præmunire* is tried at Her Suit, yet in such Case, and in Appeals, the Trial shall be by Freeholders.

He must be a Peer *ratione Nobilitatis*, and not *Baronia quæ tenet jure Ecclesiæ*, for Bishops have not this Privilege, nor the Sons of Noblemen, if such Sons are not Lords of Parliament.

The Indictment may be either before the Commissioners of Oyer and Terminer in the County where the Offence was committed, or in *B. R.* if done in *Middlesex*.

After 'tis found, the Queen appoints a Lord High Steward of England by a Commission under the Great Seal, *pro hac vice*, but yet such Commission may be adjourned.

In this the Indictment is recited, and Power given to the Lord High Steward to proceed thereon, *secundum Legem & Consuetudinem Angliæ*, and the Peers are commanded to attend him, and the Lieutenant of the Tower to bring up the Prisoner; this is the Substance of the Commission.

Then Two Writs are issued out of Chancery, *viz.* a *Certiorari* to remove the Indictment returnable *indilate*, and a Writ directed to the Lieutenant of the Tower to bring up the Prisoner.

The Lord High Steward likewise makes Two Precepts under his Seal, the one directed to the Commissioners to certify the Indictment, the other to the Lieutenant of the Tower, setting forth the Time and Place when he shall bring up the Prisoner.

He also directs another Precept to the Serjeant at Arms to summon the Peers to appear.

The Court being sat, the Clerk of the Crown and the Usher deliver the Commission and the White Rod to the Lord High Steward, and both are by him delivered to them respectively; and the Usher holds the Rod all the Time of the Trial.

Then the Serjeant at Arms makes Three Proclamations :

- (1.) To all Justices and Commissioners to certify Indictments and Records.
- (2.) That

Peers.

(2.) That the Lieutenant of the Tower return his Writ and Precept, and that he bring the Prisoner to the Bar.

(3.) That the Serjeant at Arms return his Precept, with the Names of the Peers by him summoned.

The Return of these Writs and Precepts are read by the Clerk of the Crown, and another Proclamation is made, That the Peers answer to their Names; but they are not to be sworn.

If the Prisoner pleads Not Guilty, he cannot have Council, because the Issue being joined upon a Matter of Fact, the Proof ought to be so plain, that no Defence can be made against it; but he may have Council upon Matter of Law, as where a Pardon is pleaded, &c.

If the Peers, when withdrawn, doubt upon any Thing, it must be resolved in Court, in the Presence and Hearing of the Prisoner, and for that Purpose the Judges attend the Trial. Now the Reason why the Prisoner must be present, is because he ought to be satisfied that the Case is put right.

They ought to continue together till they are agreed of their Verdict, which is given in the Absence of the Prisoner.

This was an Opinion formerly; but since it was resolved in my Lord Morley's Case, because they were not sworn, and by reason of the great Trust reposed in them, they might go to their own Houses.

Perjury,

IS an Offence, where a *Lawful Oath* is administered to a Witness by any who hath *Authority* so to do in any *Judicial Proceeding*, and the Person sweareth falsely, either himself, or by the Subornation of another, in a Matter *material* to the Issue or Cause.

By Fine and
Imprison-
ment.

2 Cro. 8.

* 5 Eliz.
cap. 9.

Sid. 454.

'Tis punishable either at *Common Law*, or by the * Statute. A false Oath in any *Court of Record*, or in any *Judicial Proceeding*, tho' not in a *Court of Record*, is Perjury at *Common Law*, tho' 'tis not in any Thing *material* to the Issue. *Stiles* 374. *Roll. Abr.* 2 Pars 257, 258. *Sid.* 274.

And therefore Perjury in the *Spiritual Court*, or in a *Court Baron*, is punishable at *Common Law*: But where the Indictment is upon the *Statute*, it must appear to be committed in a *Court of Record*, as if the Defendant is indicted for *procuring* a Witness to take a false Oath before the *Crown-Clerk* of

3 Leon. 170.

Lin.

London; this is not within the Statute, for 'tis *coram non Iudice*, and the Subornation must be to give Evidence in a Court of Record.

So where a Man was prosecuted in the *Star Chamber* for a Perjury in the Court of Requests, where the Freehold of the Land came in Question; it was resolved by all the Judges, That the Man was not punishable, because that Court had no Authority to examine Titles of Land, and therefore what he swore was no more than an idle Oath. Yel. 3.

But if a Man swear in common Discourse, that he hath a Property in a Thing, when really he hath not; or if a Constable is sworn to execute his Office truly, and doth not; these and such-like Oaths are called Extrajudicial, and are punishable neither at Common Law, or by the Statute of Perjury.

If an Indictment is grounded upon the Common Law, there needs not so great a Certainty in it as if brought on the Statute. *Sid. 106.*

By which 'tis enacted, (*viz.*) That whosoever shall procure another to commit corrupt Perjury in any Court of Record, or in perpetuum rei memoriam, the Suborner shall forfeit 40*l.* being convicted; and if not worth it, then he shall be committed six Months without Bail, and shall stand in the Pillory one Hour in some Market-Town adjoining, or where the Offence was committed, and be never more a Witness till Judgment is reversed. 5 Eliz.

The Suborned, or he who by his own Act commits wilful Perjury, shall upon Conviction forfeit 20*l.* and be committed six Months without Bail, and be disabled to be a Witness till Judgment is reversed; and if not worth 20*l.* then to be set in the Pillory as aforesaid, and have both his Ears nailed.

One Moiety of the Forfeitures to the Queen, the other to the Party grieved who will sue for the same.

Justices in Sessions have Power to hear and determine, &c. the Offences against this Statute.

My Lord Coke, in his Paraphrase upon this Statute, tells us, That the Indictment must set forth the Judicial Proceeding; it must also shew, that the Oath was taken in something material to the Issue, because the Act gives the Remedy to the Party grieved, and if the Deposition is not in a Thing which is conducing to the Issue, the Party is not grieved. *Cro. Car. 152. 3 Inst. 165.*

Perjury may be committed in an Answer in Chancery, tho' not in a Matter charged in the Bill; but then the Indictment must be laid at Common Law, because 'tis in a Thing not material to the Issue: But if it had been in a Deposition, 'tis not Perjury, if not contrary in a Matter particularly charged in the Interrogatories, because the Commissioners, who administer

* Upon the Statute, *Cro. Car. 353.*

minister the Oath, have not Power but only in Matters therein charged. *Sid.* 274.

* 3 Bulst.
322. 1 Rol.
Rep. 79.
3 Leon. 201.
Yel. 120.
Noy 80.
Latch. 38.
132.
4 Leon. 105.
Godb. 71.
179.
That a Man
is punish-
able on the
Statute for
a false Oath
before a
Steward of
a Leet.
Stiles 324.
29 Car. 2.
cap. 5.
Sid. 106.
2 Rol. Rep.
427.
Cro. Eliz.
428.
2 Leon. 211.
Cro. Eliz.
147, 201.
Het. 12.

The Reason why Perjury cannot be punish'd by the Statute for a false *Affidavit* taken before a Master in Chancery, or for a false *Answer*, is, because the Statute extended only to * *Witnesses* in Causes between the *Parties*; but such false *Affidavit* may be punish'd as aforesaid, by an Indictment at Common Law; and in such Case the *Affidavit* must be filed, and after the Perjury is assigned, you must conclude *prout patet per Recordum*. *Stiles* 336.

But if it appears that the Oath was made in something conducing to the *Issue*, setting forth that the Master had Power to administer an Oath, the Indictment may be good upon the Statute.

If an Indictment is at Common Law, supposing the Perjury to be committed in a *Deposition* to Interrogatories in Chancery, you need not set forth to what Interrogatory; but if 'tis upon the Statute, then you must shew that the Commission was under the Great Seal of England, that it may appear to the Court the Commissioners had Authority to administer the Oath, and you must assign the Perjury to be in a Point conducing to the *Issue* in Chancery, and shew how it concerned the same.

So likewise, if it be upon the Statute, it must appear to be wilful Perjury; for if 'tis that the Defendant *falsa & deceptivo deposuit*, 'tis not good, tho' the Indictment concludes *& suorum voluntarium Perjurium*, because the one is no positive Allegation that he did it wilfully, and the other is but a wrong Conclusion from the Premises.

Indictment for Perjury in a Deposition.

Suffex ff. Jur', &c. quod J. O. de H. in Com' pred' Inn-holder, 17 die Augusti, Anno Regni, &c. apud H. pred' in Com' pred' coram R. S. & R. P. Ar' Commissionariis virtute brevis dicta Domina Regine de Commissione extra Curiam Cancellarie sue apud Westm. in Com' Middl. preantea emanentis & pred' R. S. & R. P. direct' pro Examinatione testium tam ex parte J. L. de L. in Com' pred' Gen' querentis quam ex parte C. H. de B. in Com' pred' Ar' defendantis in quadam causa sive materia inter ipsos J. L. & C. H. tunc in dicta Curia Cancellaria in variantia dependa pro titulo unius Messuagii cum pertin' in H. pred' Personaliter constitutus & tunc & ibidem existens † testis productus per pred' J. L.

† If a Man wage his Law, he is a Witness for himself, but not punishable by the Statute. Noy 12. If a Man swears the Truth, and doth not know it, he is guilty of Perjury. Het. 97.

ad testificandum & deponendum in causa præd. ex parte ipsius J. L. & Juratus per dictos Commissionarios ad veritatem dicend. super interrogatoriis ei adtunc & ibidem ministrandis per præd' Commissionarios ad sextum interrogatorium ei adtunc & ibidem per dictos Commissionarios ex parte præd' J. L. ministratum * dixit & super Sacramentum suum voluntarie & corrupte deposuit & affirmavit in his Anglicanis verbis sequen. viz. To the sixth Interrogatory he saith, That the said Messuage was used, &c. Prout per præd' depositionem præd' J. O. inter alia præfat' Commissionariis in dicta Cancellaria Certificatam & missam ac ibidem de recordo remanen' plenius apparet ubi revera & in facto præd' Messuagium non occupatum fuit, &c. Et sic idem J. O. dicto 17 die Augusti, Anno supradicto apud H. præd' in Com' præd' coram præfat' R. S. & R. P. Commissionariis dictæ Dom' Reg' (ut præfertur) existentibus voluntarie & corrupte Perjurium commisit voluntarium & corruptum contra formam Statuti in hujusmodi casu edit. & provis', &c.

* Tacio per se sacro Evangelio deposuit, is ill, because no positive Allegation that he was sworn.
Cro. Eliz. 104.

An Indictment upon the Statute of 29 Car. 2. cap. 5. for Perjury in an Affidavit before Commissioners Extraordinary.

Sufflex ff. Jur', &c. quod J. O. de H. in Com' præd' Gen' 16 die Aug. Anno Regni, apud H. præd' in Com' præd' venit coram T. S. Gen' adtunc Commissionar' virtute cujusdam actus Parliamenti, Anno Regni Domini Caroli nuper Regis Angliæ, &c. 29 fact' intitulat', An Act for taking Affidavits in the County, to be made use of in the Courts of King's-Bench, Common-Pleas, and Exchequer, nuper edit' & provis' & adtunc & ibidem Juratus existens super Sacrosancta Dei Evangelia (eodem T. S. adtunc habens sufficien' autoritatem ad administrand' Sacramentum præfat' J. O. virtute Actus Parliamenti præd') adtunc & ibidem super Sacramentum suum præd' falso malitiose voluntarie & corrupte deposuit juravit & in scriptis affirmavit de & concernente, [Here recite the Special Matter, and afterwards the Affidavit in hæc verba] Inter R. W. queren' & P. E. defenden' prout per Sacramentum prædict' ejusdem J. O. in scriptis remanen' & in Curia dictæ Dom' Reg' coram ipsa Regina apud Westm. in Com' Middlesex, affilat' plenius liquet & apparet ubi revera & in facto [Here recite the Perjury] præd' J. O. falso, malitiose, voluntarie & corrupte deposuit juravit & in scriptis affirmavit & sic præd' J. O. præd' 17 die Augusti, Anno Regni, &c. apud H. præd' in Com' præd' coram præfat' T. S. Gen' adtunc & adhuc Commissionar' virtute præd' actus Parliamenti existen' adtunc & ibidem habens sufficien' autoritatem ad administrand' præd' Sacramentum præfat' J. O. falso, malitiose, voluntarie & corrupte commisit voluntarium & corruptum Perjurium contra formam Statuti, &c.

Perjury in an Affidavit before Commissioners, by Vertue of this Act, is punishable, as if taken in open Court.

An

An Indictment for Subornation of a Witness in an Answer in Chancery.

Go Ent.
362. B.

*If in reciting the Action you should mistake the Term in which it was brought, this is only Circumstantial; and if it appear to be between the same Parties, and in the same Cause, 'tis good, for the Defendant cannot be doubly charged in such Case. Godb. 88.

Middl. ff. *Jur*, &c. quod F. L. nuper de L. in Com' præd' Gen' 17 die Augusti, Anno Regni. &c. apud Westm. in Com' prædiæt' illicite & corrupte per sinistros & illegitimos labores & medios procurabat & causabat quendam R. O. de H. &c. testem ex parte F. L. ad tunc & ibidem productum ad testificand' pro eodem F. L. in Curia Cancellaria dictæ Domine Regine apud Westm. præd' ad * quendam Billam in eadem penden' pro & concernente quadam legatione quindecim librarum cuidam F. L. filio prædiæt' F. L. per ultimam voluntat' S. S. patris R. S. legat' & devisat' voluntarium & corruptum Perjurium committere in hoc quod idem R. O. super Sacrum. suum coram Dom' Reg' in Cancellaria sua præd' apud Westminster, falso præstitit Sacrum. suum præd' & corruptive dixit & quod ipse idem R. O. (here recite the Oath) ubi revera (here recite the Perjury) ratione cujus falsæ Depositionis & Juramenti per præd' R. O. modo & forma præd' fact' & jurat' præd' R. S. sustinuit damna viginti librarum & sic idem F. L. prædiæt' 17 die Augusti, Anno supradictæ apud Westminster, præd' in Com' Middlesex, præd' procuravit & causavit præd' R. O. per depositionem suam præd' committere & perpetrare corruptum Perjurium in dictæ Dom' Reg' nunc contemptum & ad grave dampnum ipsius R. S. contra formam Statut', &c.

If Issue be joined upon any of these Indictments, and the Prosecutor will not try it, the Defendant may bring it on by *Proviso*, tho' 'tis not in the Case of the Queen, because 'tis for the Benefit of the Subject not to lie under such an Imputation.

And because the Fact shall be tried, the Courts above do not grant *Certioraries* to remove these Indictments, nor quash them upon Motions before Trial.

Sid. 49.
1 Lev. 2.

Neither after Trial do they grant a new one, tho' there is apparent Cause; but this must be understood where the Defendant is acquitted, for 'tis otherwise where he is found guilty.

Sid. 217.

R. was convicted of Perjury, upon the Evidence of D. and afterwards R. convicted D. of Perjury in the very same Matter; but before he can be restored to his Credit, he must bring a Writ of Error to reverse the Judgment upon the first Perjury.

I shall

I shall mention a Case or two more, and conclude this Title.

B. a Midwife, was indicted for Perjury; the Case was thus, *viz.* One *Dormer* was Tenant for Life, with Remainder in Tail to his Son, and for want of such Issue to his Daughter, &c. he married and lodged with his Wife in *Chancery-Lane*, and in a short Time died; the Wife, soon after his Death, declared, That she was delivered of a Daughter; and upon a Trial in Ejectment between the Infant and him in Remainder, it was proved that she was delivered by Circumstances usual in such Cases; but the Midwife deposed, That this was the Child of a poor Woman in *St. Giles's in the Fields*, which she bought of the Mother for half a Crown, and that she conveyed it into the Bosom of *Mrs. Dormer*, who cried out, and then the Midwife took the Child from her, and that there was a Bladder of Blood, and some other Things provided by her, to shew the After-Birth: The Jury gave Credit to the Midwife, and acquitted her of the Perjury. Sid. 377.

A Bill in *Chancery* was filed against B. and B. put in his Answer, and made Affidavit, that C. was so ill that he could not Travel; when the Cause came to be heard, C. came into Court, and affirmed, That he was not sick, but that it was a Contrivance of B. who desired him to feign himself sick in Bed, that he might depose he left him so. The Lord Keeper *Egerton* ordered both Parties to attend, and to be examined on Interrogatories, and B. denied the Practice; but C. affirmed it, and produced some Witnesses, who proved it very plainly. Now this being double Perjury, for making a false Affidavit, and afterwards denying the Practice on Interrogatories, he was fined 20 l. to the Queen, and committed. This I have mentioned, because there have been some Doubts, whether the *Chancery* could punish Perjury. Moor 657.

Price was indicted upon the Statute, for that he being produced as a Witness for the King upon the Trial in an Information, he did forswear himself, and shewed wherein, and it was held, That a Witness for the Queen cannot be punished by an *Indictment*, which is meerly at the Suit of the Queen, for She cannot punish her own Witness, but he may be prosecuted upon the Statute by an *Information*, because one Moiety of the Penalty goes to the Informer. 2 Cro. 120.

* On the Statute.

Sir *John Jackson* obtained a Verdict against one *Primato*, in Trespass, who indicted the Witnesses for Perjury; and this coming to a Trial, Sir *John* ordered his Servants to beat the Witnesses who were to prove the Perjury; which was done, so as they could not appear that Day: And thereupon the Defendants were acquitted. And because after an Acquittal in a Criminal Case a new Trial cannot be granted, therefore the

Perjury, &c.

the Court directed an Information against Sir John Jackson for this Offence, and he was convicted upon it, and fined 1000*l.* and bound to his good Behaviour for a Year. 1 *Lew.* 124. *Sid.* 153.

Pick-Pocket.

THis is called, by my Lord *Hales*, Larceny, from the Person, without putting him in Fear, for 'tis done *clam & secreta*, without his Knowledge; and in such Case, the Offender shall not have the Benefit of his Clergy, for 'tis taken away by 8 *Eliz. cap.* 4.

But 'tis not Capital, unless the Thing taken be of the Value of 12*d.* or more; for though the Statute took away the Privilege of Clergy, it did not alter the Offence, but it remains still Petit-Larceny, if under that Value. Therefore,

1. It must be *clam & secreta*.
2. The Thief must have the actual Possession of the Thing taken.
3. It must be without putting in Fear.

Indictment for this Offence.

Suffex ff. Jur', &c. quod J. O. nuper de H. in Com' prad' Labourer, 18 die Augusti, Anno Regni, &c. apud H. prad' in Com' prad' decem solidos in pecuniis numeratis de bonis & caballis ejusdem R. P. adtunc & ibidem a Persona ipsius R. P. clam & secreta & sine notitia prad' R. P. felonice cepit furatus est & asportavit contra pacem dicta Dom' Reg', &c.

Pillory.

THis is an infamous Punishment used here in the same Times, and since that appointed by several Statutes.

- 51 H. 3. On Bakers.
- 31 Ed. 1. On Foresters.
- 11 H. 7. *cap.* 4. For false Weights.
- 33 H. 8. *cap.* 1. Getting Money by Counterfeit-Letters.

- 2 *Ed. 6. cap. 15.* Workmen conspiring about Wages, second Offence.
 5 *Ed. 6. cap. 6.* Counterfeiting Seals of Cloath, or taking them off.
 5 *Eliz. cap. 9.* Perjury.

Justices of Peace should be well advised before they give Judgment herein, and the safest Way is to follow the Acts of Parliament. 3 Inst. 219.

Pleas, See felony.

Pidgeons.

ANY Person killing or taking them, shall be committed by two Justices for three Months without Bail, unless he pay immediately to the Use of the Poor where the Offence was committed, or the Offender apprehended, 20 s. for every Pidgeon so killed or destroyed.

If he doth not pay the Penalty, but is committed, then he may, after a Commitment for a Month, be discharged, if he will be bound before two Justices with two Sureties in 20 l. a-piece, with a Condition never to offend again in the like Nature.

Conviction must be by his own Confession, or by Oath of two Witnesses, before two Justices.

See more for Pidgeons, under Title Dogs.

'Tis not a common Nufance to build a Pidgeon-House, if the Person is a Freeholder, and therefore not punishable in a Leet; for it cannot be a common Nufance, unless 'tis so to all People: Now this can be only a Nufance to those whose Corn they eat. *2 Cro. 492. Poph. 141.*

Piracy,

IS an Offence of which the Common Law takes no Notice, because it cannot be tried by that Law, being done out of the Land.

* 28 H. 8.
cap. 15.

† Therefore Clergy
not allow-
ed, because
'tis not an
Offence at
Common
Law, but
by the Ci-
vil Law,
which doth
not allow
Clergy in
any Case.

Moor 756.

T. l. 135.

Nay 131.

* 2 & 3

Ed. 6. c. 24.

11 & 12 W.

'Tis * Felony by the Civil Law, and triable by it until the Statute of H. 8. which alters not the † Offence, but the Method of Trial, viz. That it shall be tried according to the Course of the Common Law.

'Tis for this Reason, That a Pardon of all Felonies will not pardon Piracy, because 'tis not Felony at Common Law, and therefore there can be no Corruption of Blood upon an Attainder for this Offence, tho' there is a Forfeiture of Life, Lands and Goods.

Neither can there be any Accessary at Land, because the Principal is not a Felon by our Law; but there may be an Accessary at Sea, and his Trial must be by the Civil Law, for no * Statute concerning Accessaries extends to this Offence.

But because it was a great Trouble and Charge to send People into *England* to be tried here for Piracies committed in the *Indies*; therefore by the Statute 11 Will. 'tis enacted, That all Piracies, Felonies and Robberies, committed in any Port or Place where the Admiral hath Jurisdiction, may be tried either at Sea or upon Land in any of the Islands, Plantations, Colonies, Dominions, Forts and Factories of the Queen, where it shall be appointed by Commission under the Great Seal of *England*, or the Seal of the Admiralty; which Commission is to be directed to the Admiral, Vice-Admirals, Rear-Admirals, Judges of Vice-Admiralty, or Commanders of any of the Queen's Ships of War, and to such other Persons as the Queen shall think fit.

These Commissioners may commit the Offender to Prison by Warrant under their Hands and Seals; but they must have Information of the Fact upon the Oath which they may administer.

Then they may assemble a Court of Admiralty, which must consist of Seven Persons; and if so many cannot be had, then may Three of the Commissioners, whereof the President of the *English* Factory, or the Governour, Lieutenant-Governour, or Member of Her Majesty's Councils in any of the Plantations, or Commander of one of Her Majesty's Ships, is to be one, who may assemble any Persons to make up Seven in Number, so as they are Merchants, Factors or Planters, Captains, Lieutenants, or Warrant-Officers in Ships of War, or Captains, Masters of Mates in Merchant-men.

This Court may issue out Warrants to bring in the Party accused, may summon Witnesses and examine them on Oath, and may give Sentence and Judgment of Death, and may award Execution according to the Civil Law: And the Persons so convicted shall lose Lands, Goods and Chattels, as if attainted by Common Law.

When

When the Court is first assembled, the Commission shall be read, and the Court shall be called and proclaimed, and the President shall take this Oath :

J. I R. P. do swear, &c. Then he shall administer the same Oath to the rest of the Court : Then the Prisoner shall appear, and the Register shall read the Articles upon which he is to be tried, in which Articles the particular Facts of Piracy, when and where, and in what Manner, &c. shall be expressed.

The Witnesses for and against the Prisoner shall be examined on Oath, and Judgment shall be given by Plurality of Votes ; and the Prisoner shall be executed on the Sea, by Warrant directed to a Provost-Marshal, who shall be appointed for that Purpose by the President and the major Part of the Court.

The Register must be a Publick Notary, or one appointed by the Court, who must take Minutes, and enter them in a Book, and shall transmit the same, with the Copies of Articles and Indictments, to the Admiralty in *England*.

If any of the Queen's Subjects commit an Act of Hostility on the Sea against other of Her Subjects, by Vertue of any Commission from any Foreign Prince or State ; this is Piracy.

If any Master of a Ship, Seaman or Mariner, where the Admiral hath Jurisdiction, shall betray his Trust, turn Pirate, run away with his Ship, &c. Goods or Merchandize, or yield them up to any Pirate, or shall bring any seducing Messages from any Pirate, or corrupt or attempt any Commander or Mariner to yield up, or turn away, with the Ship or Goods, or lay violent Hands on his Commander, to hinder him from defending his Ship, &c. or shall confine the Master, or endeavour to make any Revolt in the Ship ; such Person shall be taken to be a Pirate, &c.

He that sets forth a Pirate, or doth aid, assist, maintain, procure, command, counsel or advise any Person to commit Piracy, who doth it accordingly, is accessory to Piracy ; and so is the Receiver or Concealer of a Pirate, knowing him to be so ; and such Accessories must be tried by the Common Law, as the Principals are by Statute 28 H. 8. which is declared to be in Force, and if convicted, shall be executed. See the Statute at large.

This Act is now continued by 5 *Anna*, for the Space 5 *Annæ*, of Seven Years, and from thence to the End of the next Sessions of Parliament.

Point, See Bone-Lane.

Pond, See Water in Title fish.

Poor.

IT was the Complaint of my Lord Chief Justice Hale, That the Laws of this Kingdom are defective in the Provision for the Poor, and that (contrary to all other Nations) the more populous we are, still we are the poorer.

But as the Law now stands, which is chiefly that of 43. Eliz. cap. 2. the Fault seems wholly to be in the Overseers of the Poor, who have only got a Custom of taxing the Parish, and neglect their Duty in the most material Things relating to their Poor.

This is the first Statute Law made for Relief of the Poor; for before the Reformation, there was no Occasion for any such Law, because such was the Devotion of our Ancestors, that there seemed to be a pious Contention amongst them who should first bring in their Offering to the Church.

The Bishop, to whom the Charge of Souls was committed, was (for that Reason) thought the fittest Person to be intrusted with those Oblations, which were usually divided into Four Parts, and thus distributed, (*viz.*) To the Priests, to the Poor, towards the Fabrick of the Church, and to himself, *hospitatatis exercendæ causa.*

By these, and other superabundant Offerings at Altars, Sepulchres, and Shrines of Martyrs, the Church became so rich, that several Monasteries, Priories, religious Houses and Hospitals, were by this Means founded and plentifully endowed, where the Poor were sufficiently relieved till those Houses were dissolved; and it was above 50 Years after the Dissolution that this Statute was made.

Overseers
when and
how
made.

These Persons are usually nominated in the Easter-Week, or within a Month afterwards, and this by an Appointment under the Hands and Seals of two Justices dwelling in or near the Parish, or Division where the Parish lieth. The Form is thus:

Two Ju-
stices, Quo-
rum unus.

Suffex ss. **W**E whose Names are subscribed, being Justices of the Peace for the County of S. do appoint T. P. and J. O. of H. in the said County. to be Overseers of the Poor of the said Parish, for and during the Space of one whole Year next ensuing the Date hereof, according to the Form of the Statute in that Case made and provided. Given under our Hands and Seals, &c.

By this Statute, they are to meet every Month in the Parish-Church, if not sick, or having some other just Excuse to be allowed by two Justices; and their Intent of their Meeting, is to consider of some proper Methods, not only to tax the People, and apply the Money for Relief of the Poor, but to raise by such Taxation a convenient Stock of Flax, Hemp, Wool, Thread, Iron, and other necessary Stuff, to set them to work.

If they neglect thus to meet, they forfeit 20 s. for every Neglect to the Use of the Poor.

We have Laws now in Force, to confine Men to certain Places of Habitation, which is a Sort of Imprisonment, not for a Fault, but for a Misfortune in being poor; and it hath been questioned by some, whether such Laws were fit to be introduced amongst us, especially when so little Care is taken to employ our Poor.

It was this made a late Author propose an Expedient, which he thought would be more effectual to raise a Stock to set them on work, viz. That every Person who deviseth one or more Legacies to the Value of 100 l. should bequeath 5 l. to the Poor of the Hundred or Division where he died; and in case of Neglect, the Law should make such a Construction; and this was to be paid to the High-Constable, and applied by the Justices at their next Monthly Meeting to raise a Stock to set the Poor to work where there is most Occasion.

But by a late Act, the Liberty of a poor Man is a little enlarged, for now he may remove into another Parish where he may have Work; but then he must have a Certificate under the Hands and Seals of the Church-wardens and Overseers, or the major Part of them; or under the Hands and Seals of the Overseers where there are no Church-wardens, acknowledging the Person therein mentioned to be an Inhabitant legally settled in the Parish.

This Certificate must be attested by Two Witnesses, and allowed and subscribed by Two Justices, and delivered to the Officers of the Parish to which he removeth.

And this shall oblige the first Parish to receive the poor Man and his Family when he stands in need of Relief.

And by a subsequent Law 'tis declared, That the Person who shall come into a Parish by such Certificate, shall not be adjudged to have a lawful Settlement by any Act whatsoever, unless he shall take a Lease of 10 l. per Annum, or execute some Annual Office in such Parish.

8 & 9 Will.
Terrifi-
cate,
Explana-
102p Act,

9 & 10 W,

In *Trinity-Term*, 2 *Anna*, a Question did arise between Two Parishes in *Northampton*, upon an Order removed into *B. R.* by *Certiorari*; which was thus:

A Person who was not legally settled in the Parish who gave the Certificate, but who had lived there for some Time, went into another Parish by Vertue of the Certificate, by which the Parish who gave it owned him to be settled as an Inhabitant with them; afterwards, being poor, the Parish from which he came took him again; but upon Enquiry, found that he was never lawfully settled with them, but had gain'd a Settlement in another Place before they gave this Certificate, and thither they removed him: The Parish to which he was removed appeals, because those who had given the Certificate had owned him to be an Inhabitant settled with them; but the Certificate was held by the Court to be only an Evidence of a Settlement, and so the first Order was confirmed.

The Persons to be maintain'd by a Parish-Charge, are of Two Sorts, *viz.*

- Poor. } 1. By Impotency, as aged Persons; by Defect, as Infants; being naturally disabled; as Ideots or Persons visited by Sickness.
2. By Casualty, as Persons maimed; House-keepers decayed by Fire, Robbery, or being bound for others and paying their Debts.

Who are to be rated, and how.

And every Inhabitant and Occupier of Houses, Lands, Tythes, Mines, or Underwoods, is to be taxed towards this Charge, according to the visible Estate which he hath or possesseth in the Parish where taxed, and not elsewhere.

This Tax is either upon Lands or Goods, but one and the same Person is seldom taxed for both.

The Farmer or Occupier, and not the Landlord, is liable to this Tax, for it arises by reason of the Land in the Parish, and the Landlord is never assessed for his Rent.

The most reasonable Way of Land, is according to a Pound Rate, and not according to the Quantity of the Land.

Where a Man hath Land, and a great Stock of Wares, as a Clothier, &c. he may be taxed for both, but not for such Stock or Goods with which he doth use to manure his Lands.

When Goods are rated, it ought to be after the Value of Lands, *viz.* Goods of the Value of 100 *l.* shall be rated at 1 *l.* per Ann. as Lands are; and the Person must be charged only in that Place where the Goods are at the Time of the Assessment, for if he hath no Goods where assessed, and is distressed, he may have an Action of Trespass, &c.

If the Parish is not able to maintain its own Poor, Two Justices may tax any other Parish within the Hundred, and the Sessions may tax any Parish within the County.

If a Parish extendeth into Two Counties, or Liberties, the Justices in such Case shall intermeddle with that Part which lies within their respective Jurisdictions, but the Overseers shall act in the whole Parish, and not divide themselves.

1 Vent. 350.

If there is a Vill a Parish which formerly had a Church or Chappel, and Parochial Rites, and Officers chosen by the Inhabitants, and a separate Taxation made, &c. this is a Parish within the Act. *Hutt. 93. Cro. Car. 92.*

Jones 355.

But making Rates since the Statute, and Proof of a Chappel being in a Village before, will not make it a Parish with all other Parochial Rites.

The Title of an Assessment for the Poor.

H. in the County **A**N Assessment made on the Inhabitants of *Suffex ss.* of the Parish aforesaid, for and towards the necessary Relief of the Poor thereof for this present Year commencing, &c.

J. O. }
W. U. } Church-wardens.

E. H. }
R. N. } Overseers.

A Confirmation of the Rate by the Inhabitants.

WE whose Names are subscribed to this Assessment, being Inhabitants of the Parish aforesaid, have seen and perus'd the same, and the several Sums above-mentioned are, by our Approbation, rated upon the respective Persons according to the best of our Judgment.

Witness our Hands,

T. P.
R. B.
D. O.

Confirmed by Two Justices.

Ratified and allowed by us, Two of Her Majesty's Justices of the Peace for the County aforesaid,

W. N.
T. B.

The Rate being thus confirmed, if any Person shall refuse to pay, &c. it may be levied by Warrant from Two Justices by Distress, &c. and if that cannot be taken, then Two Justices may commit without Bail till Payment, &c. The Form is,

A Warrant to distrain for the Poor's Tax.

To the Church-wardens and Overseers of the Poor of the Parish of H.

Two Justices, *Quorum unus.*

WHereas Complaint hath been made unto us, That J. O. and T. P. both of your Parish, Husbandmen, being duly and severally assessed; that is to say, J. O. in 3 s. and T. P. in 5 s. for and towards the necessary Relief of the Poor of the said Parish have and do refuse to pay the same as by Law they ought: These are therefore to command you, That forthwith you, or one of you, do levy the said respective Sums of Money upon the said J. O. and T. P. by Distress and Sale of their respective Goods, and in Default of such Distress, that then you certify the same to us. Given under our Hands and Seals, &c.

A Mittimus where a Distress cannot be had.

To the Keeper, &c.

Sussex J.

WHereas J. O. and T. P. both of, &c. were lawfully and duly assessed at their respective Sums of, &c. for and towards the necessary Relief of the Poor of the said Parish, and that they refused to pay the said Sums, and thereupon a Warrant was directed to the Church-wardens and Overseers of the Poor of the Parish aforesaid, under the Hands and Seals of, &c. Two of Her Majesty's Justices of the Peace for the said County, to levy the same by Distress and Sale of the Goods of the said Offenders; and whereas it appeareth unto us, That the said J. O. and T. P. have no Goods and Chattels upon which a Distress may or can be made, and that the said J. O. and T. P. do still refuse

fulse to pay the respective Sums upon them assessed: We therefore herewithal do send you the Bodies of the said J. O. and T. P. commanding you to receive them into Custody, and that they remain in Gaol without Bail or Mainprize, until they pay the said Sums respectively. Given under our Hands and Seal, &c.

But if any one thinks himself grieved by a Tax, he may appeal to the Sessions, whose Determination is final.

Sometimes the Sessions refer the Matter back again to Two Justices, to examine the Equality of the Taxes, and then those Justices may confirm it if they see Cause.

Many People being poor by Losses and other Misfortunes, and not able to make present Satisfaction to their Creditors; a Law was made, That if a poor Man was in Prison on the First of January 1701, for Debt or Dammage, &c. and not able to maintain himself there, he might petition the Court of Quarter-Sessions, who have Power to summon the Creditors, without taking any Fee for the same, and also the Gaoler to bring the Prisoner before them, with a Copy of the Causes of his Commitment, for which he is to take 6 *d.* and no more; and if he neglect or refuse so to do, then the Sessions may fine him, not exceeding 10 *l.* to be disposed as the major Part of the Justices shall think fit; if he refuse to pay it, he may commit him till paid.

The Prisoner appearing, and making the * Oath at the Sessions, the Creditors must shew Cause why he should not be discharged; and if they insist to keep him longer in Prison, then the Sessions may order him to give Security to allow and pay to the Prisoner himself, and not to the Gaoler,

per Diem { If within the Bill of Mortality ———— 0 0 4
 { If a Prisoner in any other Place ———— 0 0 3

Otherwise to consent to his Enlargement, but without Prejudice to their Debts.

Months, and kept to hard Labour, and without Bail, 2 & 3 Annæ. But now *per* 2 & 3 Annæ, 'tis 4 *d.* any where.

The Creditors refusing so to do by the Space of Thirty Days after such Order, or not appearing upon the Summons, the Sessions may discharge the Prisoner from his Imprisonment, with a Duplicate thereof.

But if they give Security to maintain him in Prison, and cannot within 3 Months afterwards before Two Justices, or at the next Sessions, discover any Estate he hath, then he may be discharged by a Warrant under the Hands and Seals of three

1 Annæ.

* Which see in Title Oath; and if convicted of Perjury, must suffer as in other Cases of Perjury, and be sent to the House of Correction for Twelve

But now

2 & 3 Annæ.

* Per 2 &c
3 Annæ, 'tis
Two Ju-
stices,

* three Justices directed to the Gaoler, and is not to pay Chamber-Rent or any Fees.

But before he shall be discharged, he must in the Presence of the Justices subscribe an Inventory, and exhibit it on Oath, containing,

1. His Estate or Effects.
2. What Debts are owing to him, and by whom, for what Cause, and upon what Securities.

And must deliver the Securities to the Justices, or to whom they shall appoint; and the Inventory is to be kept by the Clerk of the Peace for the Benefit of the Creditors.

Neither is a Prisoner to be discharg'd in any of these Cases following;

† Per 2 &c
3 Annæ, 'tis
100 l.

(1.) If he owe more than † 20 l. principal Money to any one Person.

(2.) If he hath not been in Prison six Months before the Oath made.

* Per 2 &c
3 Annæ, no
Age is set
down; and

(3.) If under the Age of * Forty Years, and doth not before his Discharge list himself a Soldier by Land or Sea.

and therefore, if not able to help himself, he must procure One.

* Per 2 &c
3 Annæ, 'tis
8 Novemb.
1703.

If after such Discharge the Poor Man shall be arrested for any Cause of Action accruing before the † first Day of January 1701, then Three Justices may discharge him again by Warrant as aforesaid, he giving an Appearance to the Action; for the Discharge of his Person, is not a Discharge of the Debt, nor of any Person bound with him, but that they may be prosecuted; and all Judgments shall be good against him, and his Creditors may take out Execution against his Lands and Goods, but not against his Clothes, Bedding, and Tools necessary for his Trade, so as it exceed not the Value of 10 l.

Then if an Action of Escape should be brought against any Justice or Gaoler, &c. he might plead the General Issue, and give the Act in Evidence, which will indemnify them; and if the Plaintiff is cast, the Defendant shall recover treble Costs.

A Warrant to discharge a Prisoner, if no Estate is discovered, &c.

To the Keeper of the Gaol, &c.

Three Ju-
stices.

Suffex ss. Whereas it appeareth unto us, That T. P. now a Prisoner in, &c. was to be discharged from his said Imprisonment at the last general Quarter-Sessions held

held for, &c. by reason of his Poverty, but was kept there for a longer Time at the Instance and Request of R. O. and other his Creditors, and that they gave Security to maintain him in the said Prison by making such a daily Allowance to him as the Law directs. And it likewise appeareth unto us, That neither the said R. O. nor any of the said Creditors have within Three Months, nor at the next general Quarter-Sessions after such Security given as aforesaid, discovered any Estate of the Prisoner: These are therefore to require you forthwith to discharge the said T. P. out of your Custody, and suffer him to go at large; and for your so doing this shall be your Warrant. Given under our Hands and Seals, &c.

A Warrant to discharge the Person if arrested again.

To the Keeper of the Gaol, &c. and to all Sheriffs, Bailiffs of, &c.

Suffex II. **W**Hereas it appeareth unto us, That T. P. lately a Prisoner in, &c. was lawfully discharged from his said Imprisonment by Vertue of an Act made in the First Year of Her now Majesty's Reign, entituled, *An Act for the Relief of poor Prisoners for Debt*; and that after the said Discharge he hath been arrested again for a * Debt contracted by him before the first Day of January, which was in the Year of our Lord 1701, and is now in your Custody for the same: These are therefore to require you to discharge the said T. P. out of your said Custody, upon his giving an Appearance by an Attorney in the proper Court where he was so arrested as aforesaid. Given under our Hands and Seals, &c.

Three Justices.

* Or Trespas, as the Case is.

Confirmation of a Rate upon a Reference from Sessions to Two Justices.

WE whose Names are here subscribed, Two of Her Majesty's Justices of the Peace for the County aforesaid, and both of the *Quorum*, being appointed at a several Quarter-Sessions of the Peace held at L. for the East Part of this County on the Ninth Day of July, &c. to hear and examine the Differences between the Overseers of the Poor and the Inhabitants of the Parish of H. alledging, That they are over-rated to the Relief of their Poor, having examined the several Matters and Allegations relating to the same, we do find that the Rate of which Complaint is made is the same as hath been usually made there for several Years last past, and

and therefore we do confirm the same. Given under our Hands and Seals, &c.

Account
of Overseers.

These Overseers must within Four Days after the End of their Year, and after other Overseers are nominated, give up their Accounts before Two Justices in these Particulars :

1. What Money they have received, or what is assessed and not received.
2. What Stock either they or the Poor have in their Hands.
3. What Apprentices they have put out.
4. What Poor they have relieved.

If they refuse to account, Two Justices may commit them to Gaol, there to remain without Bail till they account, and pay the Money in their Hands to succeeding Overseers.

If they make a false Account, they may be bound over to Sessions, and there indicted.

If they refuse to deliver over what remains in their Hands, Two Justices, by Warrant directed to succeeding Officers, may appoint them to levy it by Distress, &c. and if that cannot be taken, then may commit them, *ut prius*.

A Warrant to make the Overseer account.

To the Constable of, &c.

Suffex ss. **T**Hese are in Her Majesty's Name to command you, That you forthwith give Notice to the Church-wardens and Overseers of the Poor of the Parish of H. in the County aforesaid, for the Year last past, personally to appear before us at, &c. on, &c. to give us a true and perfect Account in Writing of Things by them done relating to their said respective Offices ; and you are hereby required to signify unto them, that they do then and there certify unto us the Names of such other Inhabitants within your said Parish as are thought fit to be Overseers of the Poor there for the Year ensuing.

This last Clause may be left out where other Overseers are appointed.

A Warrant to levy the Arrears in the Hands of former Overseers.

To the Church-wardens and Overseers of the Poor of the Parish of H. &c.

Suffex ss. **W**Hereas it appeareth unto us upon your Complaint, That J. O. and T. P. Church-wardens, &c. and R. N. and W. V. Overseers of the Poor of the said Parish for the Year last past, were in Arrear to the said Parish in the Sum of 5 l. for Monies by them collected and received, and not disbursed, in the Execution of their Office, and have not yet paid the same to you: These are therefore to command you, that you or some of you, do levy the said 5 l. by Distress of the Goods of, &c. rendring to them respectively the Overplus; and in Default of such Distress, that then you forthwith certifie us of the same. Given under our Hands and Seals, &c.

A Warrant to levy 4 l. on an Overseer for neglecting to meet Monthly.

To the Church-wardens and Overseers of the Poor, &c.

Suffex ss. **W**Hereas it hath been duly proved before us, That J. O. one of the Overseers of the Parish of H. in the said County for the Year last past, did for the Space of Four Months within the said Year absent himself from Monthly Meetings without any just Excuse, contrary to the Duty of his said Office, and to the Statute in that Case made and provided: These are therefore in Her Majesty's Name to command you to levy Four Pounds by Distress and Sale of the Goods of the said J. O. so much being forfeited by him by Reason of his Absence as aforesaid, and that you imploy and dispose the said Sum to the Use of the Poor of the said Parish, and such other Uses as by the said Statute is appointed. Given under our Hands and Seals, &c.

Two Justices, *Quorum unus.*

A Warrant

A Warrant to Overseers to pay what is in Arrear to a poor Person, and to continue to relieve.

To the Church-wardens and Overseers of the Poor, &c.

Suffex ss. **W**Hereas Complaint hath been made unto me; by *E. N.* of your Parish, Widow, that the former Overseers of the Poor of the said Parish did pay unto the said *E. N.* the Sum of 1 s. 8 d. per Week, for and towards the Relief of her self and Children, and that you do refuse to pay the said weekly Allowance unto her, so that she is utterly disabled to make any Provision for her self and her said Children: These are therefore to require you, upon sight hereof, to pay unto the said *E. N.* all such Arrears as are become due since you have forborn to pay the same, and that you continue unto her the former Allowance of 1 s. 8 d. per Week, or forthwith shew Cause why you refuse so to do: Given under my Hand, &c.

A Warrant commanding the Overseers to relieve a poor Person:

To the Church-wardens and Overseers of the Poor of the Parish of, &c.

Suffex ss. **W**Hereas Complaint hath been made unto me, that *R. W.* of your Parish, Labourer, is very poor and impotent, and utterly disabled to provide for himself and Children, so that they are likely to perish for want of Relief: These are therefore, &c. that forthwith you do relieve the said *R. W.* and his Children; and that you make such an Allowance weekly, as may be convenient for and towards the Support of himself and Children, or forthwith shew Cause why you refuse so to do.

Parents
bound to
relieve
Children.
2 Bullst. 345.

Grandfather and Grandmother, Father and Mother, if of Ability, are bound to relieve their Children as the Sessions shall think fit, under Penalty of 20 s. per Month.

The Husband of the Grandmother is a Parent within the the Meaning of the Act, especially if she was of Ability at the Time of the Marriage, or if she had an Estate afterwards.

The same Law for a Father-in-Law. *Stiles* 283.

Settle-
ments.

By the Statute of 13 & 14 Car. 2. cap. 12. upon Complaint by the Church-wardens and Overseers of the Poor to any Justice

Justice within Forty Days after a poor Person came to settle in a Tenement under 10*l*. Two Justices might remove him to the Place where last settled for Forty Days.

This Statute did not prevent clandestine coming into Parishes, for People would conceal themselves for Forty Days, which made a Settlement; and therefore by another Statute of 1 Jac. 2. cap. 17. the Forty Days was to be accounted from the Time of the *Delivery of Notice in Writing* to one of the Church-wardens or Overseers, and this must be of the House of his Abode, and the Number of his Family, if any.

Anno 1685.

But this Act was not a sufficient Remedy against such Settlements; and therefore by 3 & 4 Will. & Mar. the Forty Days Continuance is to be accounted from the Time of *Publication of Notice in Writing* of the House of Abode, and Number of his Family.

Anno 1692.

This is to be read in the Church by the Overseer or Church-warden next Lord's-Day of Divine Service, who neglecting to read, forfeits to the Parry grieved 40*s*. Neglecting to register such Notice forfeits the like Sum, to be levied by Distress, &c. and for want of Distress, may be committed for a Month without Bail.

Proof must be before One Justice by Two Witnesses upon Oath.

But there are some Exceptions out of this last Act.

(1.) If on his own Account he execute any publick yearly Office or Charge for a Year.

(2.) If he pay any Share of Taxes or Levies of the Parish.

But it must not be Taxes to the Queen, for these grow due, and are to be paid by reason of the Residence of the People.

(3.) If an unmarried Person, not having a Child, shall be hired for a Year, such Service, that is, not the Forty Days, but his continuing in the Service for a Year, shall be a Settlement.

(4.) Being bound an Apprentice, and inhabiting in a Town.

what shall make a Settlement without Notice.

* 8 & 9 W.

Church-wardens and Overseers refusing one sent by Order of Two Justices, forfeit 5*l*. to the Use of the Poor of the Parish from whence he was removed.

Proof must be by Two Witnesses upon Oath, before One Justice of the County to which he is removed.

Forfeiture must be levied by Distress by Warrant of One Justice of the County to which he is removed, directed to the

the Constable where the Offender liveth, &c. and for want thereof, be committed for Forty Days.

Appeals. May appeal to the next Sessions of the Place from which removed.

Giving Notice to a proper Officer to appeal, and not prosecuting the same; or appealing, the Sessions may order Costs for whom the Appeal is determined, or to whom Notice was given, to be paid by the Overseers of the Poor, or other Person against whom 'tis determined, or by the Person who gave Notice, &c.

And if he lived out of the Jurisdiction of that Court, one Justice where the Person dwelleth upon Request to him made, and upon producing a true Copy of the Order proved by one Witness upon Oath, shall by Warrant, &c. cause the Money mentioned in the Order to be levied by Distress, &c. and for want thereof, commit the Person for Twenty Days.

Appeals must be determined at the Sessions of the County, or Place wherein the Parish doth lie, from whence the poor Person is removed, and not elsewhere.

Who are
to be re-
lieved.

None are to be relieved, whose Names are not registred in a Parish-Book kept for that Purpose, unless by Authority under the Hand and Seal of a Justice of the Parish, or if none there, by a Justice in the Parts adjoining, or by Order of Sessions.

But in Cases of Pestilential Diseases, viz. Plague or Small-Pox, in respect of their Families only, they are excepted.
3 & 4 W. & M. cap. 11.

He and his Wife and Children cohabiting in the same House, must have on the uppermost Garment, and upon the Shoulder of the Right Sleeve, a large Roman P. and the first Letter of his Parish; or otherwise, one Justice, &c. upon Complaint, may cause his Allowance to be abridged or suspended, or may commit Offenders to the House of Correction, not exceeding Twenty one Days.

Officers relieving such who do not wear the Badge, forfeit 20s. for every Offence, one Moiety to the Informer, the other to the Poor.

Proof is to be before one Justice upon Oath of one Witness; Forfeiture is to be levied by Warrant of one Justice.

An Order of Two Justices for the Removal of a Person from one Parish to another.

Suffex ss. **T**O the Church-wardens and Overseers of the Poor of the Parish of *F.* in the said County, and to the Church-wardens and Overseers of the Poor of the

the Parish of *L.* in the County of *Surrey*, and to each of them.

Upon the Complaint of the Church-wardens and Overseers of the Poor of the Parish of *F.* unto us whose Names are subscribed, Two of Her Majesty's Justices of the Peace for the County of *Gr.* and One of us of the *Quorum*, that *A. R.* came lately to dwell in the said Parish of *F.* not having gained a legal Settlement there according to the Laws in that Case made and provided, nor produced a Certificate to them, owning him to be settled elsewhere; and that he the said *A. R.* is likely to become chargeable to the said Parish of *F.* We, upon Examination thereof, and of the said *A. R.* do adjudge the same to be true, and that the last Place of his lawful Settlement was at *B. Gr.* We do therefore require you to convey the said *A. R.* from *F.* to the Parish of *L.* and we do also hereby require you the said Church-wardens and Overseers of the Poor of the Parish of *L.* to receive and provide for him as an Inhabitant of your Parish. Given under our Hands and Seals, *Gr.*

A Warrant to apprehend a Person returning into a Parish from whence he was removed.

To the Church-wardens and Overseers of, *Gr.*

Suffex ff. **W** Hereas *A. R.* being in *August* last lawfully settled in the Parish of *L. Gr.* did come into the Parish of *F.* in the County of *Gr.* not having given Notice to the Church-wardens or Overseers of the Poor of the Parish of *F.* of the Place of her Abode, the Number of her Family, nor otherwise acquired a lawful Settlement there, and upon Complaint made by the Officers of the said Parish of *F.* that the said *A. R.* was likely to be chargeable to their Parish, they obtained a Warrant to remove her, and accordingly did convey and remove her to the said Parish of *L.* since which the said *A. R.* did of her own accord return to the Parish of *F.* from which she was removed. These are therefore to require you, or one of you, to bring the said *A. R.* before me, or some other Justice of the Peace of, *Gr.* to shew Cause why she returned to the said Parish of *F.* and farther to do and receive as to Justice doth appertain. Given under my Hand and Seal, *Gr.*

13 & 14
Car. 2.
cap. 12.
One Justice.

The Punishment is, To be sent to the House of Correction to be whipt as a Vagabond. The *Mittimus* is as followeth:

H h

A Mir-

A Mittimus for Returning.

To the Constable of, &c. and to the Keeper of, &c.

Suffex ff. **A**S in the former Warrant to the Word [removed] These are therefore to require you, that you, or some or one of you, do forthwith convey the said *A. R.* to the House of Correction, and there to deliver her to the Keeper thereof, requiring you also the Keeper to receive her into your Custody, and punish her as a Vagrant. Given under my Hand and Seal, &c.

A Warrant to send a Wife and Children to her Husband, &c.

To the Church-wardens and Overseers of the Poor of the Parish of, &c.

Suffex ff. **W**Hereas Complaint hath been made unto us, that *H.* the Wife of *J. O.* an Inhabitant in the Parish of *H.* in the said County, is lately come into your Parish of *L.* and hath brought with her Three Children of the said *J. O.* being all Infants, and that the said *H.* and Children are likely to be chargeable to the said Parish: These are therefore to require you, or some of you, forthwith upon sight hereof to convey the said *H.* and Children to the Parish of *H.* aforesaid, and to deliver them to the said *J. O.* there to be settled with him according to Law; and if you do not find him there, then to deliver the said *H.* and Children, to the Overseers of the Poor of the said Parish of *H.* requiring you the said Overseers to provide for them as Inhabitants of your Parish. Given under our Hands and Seals, &c.

Posse Comitatus.

THE Justices, in levying the Power of the County, may have the Assistance of all Lay-men under the Degree of Knights, and above Fifteen Years of Age, and able to travel, upon Pain of Imprisonment, and Fine to the Queen.

But 'tis in the Discretion of the Justice how many or how few he will have, and after what Manner they shall be armed.

One Justice may take the Power of the County to suppress Rioters.

Premunire

Prenunire.

THis Word is applied to Offences made by several Statutes; and where 'tis said, that a Man incurreth a *Prenunire*, it is always intended that he shall have such Punishment which is to be inflicted on those who offend against the Statute of 16 R. 2. cap. 5. which is commonly called the Statute of *Prenunire*: The Judgment for which Offence is,

That the Offender be out of the Queen's Protection; that he forfeits his Lands and Tenements in Fee for ever in Tail during Life, and his Goods and Chattels to the Queen, and that he be committed during the Queen's Pleasure, 3 Inst. 18. and if he be not in Prison, then *quod capiatur*.

It hath been adjudged, that suing in the Ecclesiastical Courts concerning a Matter merely Temporal, as to excommunicate a Man for a Trespass, to sue there for a Debt, &c. this is a *Prenunire*.

So to sue in the Admiralty for any Thing but what is done *super altum mare*.

But this rarely happens, so that this Judgment is now almost antiquated.

This Offence was formerly so odious, that a Man attainted in a *Prenunire*, might have been killed by any Person whatsoever, without any Danger of Punishment by the Law, for such Men were out of the King's Protection; but now by the Statute of 5 Eliz. cap. 1. 'tis made Felony to bail one attainted by a *Prenunire*.

2 Sand. 389,
390, 391,
392.
Raim. 212,
374.
The Form
of an Indictment
and Judgment.
1 Vent. 171.

Presentment.

THis is an Accusation of the Jurors without any Bill brought before them.

It differs from an Indictment which is always the Verdict of Jurors upon a Bill drawn in Writing offered to them.

HH 2

Prison

Prison. See Gaol.

Prisoner. See Poor.

A Prison.

IS a Place where a Man is restrained of his Liberty, to answer an Offence done against the Law.

The Commitment must be by a Judge of Record, and by a lawful Warrant.

There are several Sorts of Prisons, viz.

3 H. 4. c. 10.
11 & 12 W.

1. The Common Gaol, and to this Place Justices must commit Murderers and Felons, and not elsewhere.

2. The Stocks.

3. The Prison of a Lord of a Franchise.

4. The Custody by any who hath lawfully taken the Offender, or the House of a Constable, or other Person, where a Prisoner is lawfully detained.

A Felon escaping from any of these Places, makes it a Breach of Prison.

Breaking
it by a
Felon.

There must be an actual Force; for if he go out, the Doors being open, 'tis not Felony; neither is it material that 'tis the Queen's Prison, for if 'tis the Constable's House 'tis sufficient.

Rescuing him to bring him away, is Felony in the Rescuer. If the Gaoler permits a voluntary Escape, 'tis Felony in him: But if the Escape is negligent, and not voluntary, 'tis Felony in the Prisoner, and a Misdemeanour only in the Gaoler.

An Indictment against a Prisoner for escaping by Force from a Constable.

Suffex ff. **JUR.** &c. apud T. P. de H. in Com. *prad.* Yeoman, Constabular. *dicta* Domina Regina Hundredi sui de L. in Com. *prad.* quondam J. O. nuper de H. *prad.* in Com. *prad.* Labourer, 20 die Augusti, Anno Regni, &c. cepit & arrestavit apud B. infra Hundred. *prad.* pro suspitione cujusdam felonie, viz. [Here expresses the Felony] & ea de causa idem J. O. sub custodia *dicti* T. P. Constabularii *prad.* coram H. P. Ar. un Justiciar. *dicta* Domina Regina ad pacem, &c. conductus fuit & per preceptum *prafat.* H. P. *prad.* T. P. & alius direct. idem H. P. mandavit *prafat.* T. P. conveyere sive adducere *prad.* J. O. ad Gaolam *dicta* Domina Regina Com S. *prad.* ibidem salvo & secure custodiri quousq. inde legitimo modo deliberat. for. t. virtute cujus quidem precepti idem J. O. per *prafat.* T. P. captus & detentus fuit & ad Gaolam *pradi.*

prædict. adducturus postea scilicet die & Anno supradictis apud H. præd. in Com. præd. vi & armis, &c. extra custodiam præfat. T. P. Constabularis præd. ac contra voluntatem suam felonice evasis contra pacem, &c.

For breaking a Gaol, and letting out other Prisoners.

Suffex ff. JUR. &c. quod J. O. nuper de H. in Com. præd. Labourer, 24 die Augusti, Anno Regni, &c. apud H. in Com. præd. arrestat. & imprisonat. fuit in Gaola dictæ Domine Regine apud H. in Com. præd. pro diversis felonis per ipsum perpetr. 24 die Augusti, Anno supradicti vi & armis, &c. quodque ipse præd. Gaolam dictæ Domine Regine apud H. præd. in Com. præd. fregit & R. S. de, &c. & T. B. de, &c. Labourers, prisionarios in eadem Gaola existens. ad eundem felones ad largum ire permisit contra pacem, &c.

Process.

THIS is usually after an Indictment found, and is always in the Name of the Queen, directed to the Sheriff, and Tasse by the Justice: The Justices have Power by the express Words of their Commission to make Process upon Indictments of Felony, or Trespasses; but where a Man is indicted in one County who liveth in another, there must be an *Alias* after the first *Capias* before he can be Outlawed, and there must be Three Months between the *Tasse* and Return thereof. 8 H 6. cap. 10.

There is a Proviso in this Statute, That Process shall go out as usual when the Party is indicted in the same County where he liveth; that is, if it be for Felony, and the Party not in Custody, the Justices may award a *Capias*, and then an *Exigent*; but if in Custody, they may award Process to try the Offender the next Day.

If it is for Trespass, then there must be a *Venire Facias*, &c. and if *nihil habet*, &c. a *Capias*, *Alias*, & *Pluries*, and so to the *Exigent*; but if he is returned Summoned, then a *Distingas* must issue if he doth not appear, and so *Infinite* till he come.

Sometimes Process is given by particular Statutes; as per Statute of 5 Eliz. cap. 4. the Justices may award several *Capias*'s to a Sheriff or Officer of another County where a Servant or Apprentice in Husbandry departs from his Master.

Per 5 Ed. 6. cap. 11. Justices may award Process to a Sheriff of another County, in Cases where Offenders are indicted for Felonies.

Process. Prophecies, &c.

Felonies in Counties where the Facts were done, but not where they live.

If a Man is indicted for Murder, there shall be but one *Capias*, and then an *Exigent*.

But per 25 Ed. 3. cap. 14. If for Robbery, there shall be Two *Capias* before the Outlawry.

These Processes may be stayed by *Superedeas* issuing from the Justice, setting forth that the Defendant came before him, and hath found Sureties for his Appearance to answer the Indictment, or to pay his Fine.

Prophecies.

Publishing by Writing, Printing or Speaking any false Prophecy, to make any Disturbance, &c. the Offender being lawfully convicted, shall be imprisoned for a Year without Bail, and forfeits 10 l.

For the Second Offence, being convicted, &c. shall be imprisoned for Life, and forfeits all his Goods.

One Moiety of these Forfeitures to the Queen, the other to the Prosecutor.

Purveyance.

By the Statute of 12 Car. 2. cap. 24. no Person by colour of Purveyance for the Queen, &c. shall take any Thing from the Subject without the Owner's Consent.

Any Justice of the Peace, or the Constables of the Place, may commit the Offender who by Colour of any Warrant under the Great Seal, or otherwise, shall make Purveyance, &c. there to remain till the next Sessions, and the Party shall recover treble Damages and treble Costs.

Indictment thereon.

Nullus si JUR. &c. quod 24 die Augusti, Anno Regni, &c. quidam J. O. nuper de H. in Com. pred. Labourer, apud L. in Com. pred. colore Purveiance pro dicta Domina Regina quique quos precii quadraginta solidorum de Bonis & Cattelis R. B. Gai. adtraxit & ibidem existit. inventus injuste & illicito cepit & abduxit contra voluntatem ipsius R. B. & contra pacem dicta Domina Regina necnon contra formam Statuti in huiusmodi casu editi. &c.

Quaker.
164. n. 1.

Quaker.

NO Quaker shall be permitted to give Evidence in any Criminal Causes, or serve in Juries, or bear any Office or Place of Profit in the Government. 7 & 8 Will.

By this Act, their solemn Affirmation is to go for an Oath.

I A. G. do declare in the Presence of God, the Witness of the Truth of what I say.

And if what he affirms is false, he shall be punished as in Cases of Perjury.

To continue for 7 Years, &c.

Quaker, See Tythes.

Rape. Vide Rape in Felony.

THis is * Felony at Common Law, committed by force upon a Woman by Carnally knowing her, she never consenting thereunto, either before or after the Fact.

For if the consent after the Fact, 'tis still a Rape; and though she will not prosecute, yet the Husband may; and if she have none, then the Father or next of Kin may appeal.

In Scotland, the Woman ought to complain the same Day or Night in which she was ravish'd; and by our Law, she ought to complain in forty Days afterwards, but rather immediately, for concealing it implies a Consent before the Fact.

Those who assist in committing a Rape, being present, are Principals.

* In Bracon's Time, the Punishment was loss of Eyes and Genitalia, because *calorem stupri inducerunt*.

12 Rep. 37. Savil. 42.

An Indictment for a Rape.

It was my Lord Audley's Case.

Wiles ff. JUR', &c. *quod Martinus Dominus Audley, nuper de Fountel Gifford, in Com. W. & Egidius Broadway, de F. G. præd' in Com' præd' gen. timorem Dei præ oculis suis non habentes sed instigatione diabolica moti & seducti 20 die Junii, Anno Regni, &c. apud F. G. præd' in Com' præd' vi & armis, &c. in & super Annam Dominam Audley, uxorem præfati Domini Martini Audley, in pace die & dicta Dum. Reg. ibidem existen.*

Hh 4

insult.

insult. fecerunt & præd. E. B. præd. Annam Dominam Audley vi & armis contra voluntatem ipsius Annæ adtunc & ibidem violententer & felonice rapuit, ac ipsam Annam adtunc & ibidem contra voluntatem suam violentiter & felonice carnaliter cognovit contra pacem, &c.

Et ultra jur', &c. quod præd. Martinus Dominus Audley, præd. 20 die Junii, Anno sexto supradicto apud F. G. præd. in Com. præd. felonice fuit præsens auxilians & confortans, abettans, procurans, adiuvans & manutenens præd. E. B. ad feloniam præd. in forma præd. felonice faciend. & perpetrand. contra pacem, &c.

Indictment for a Rape.

Suffex II. JUR', &c. quod J. O. de H. in Com. præd. Labaurer,

* If under ten Years, then say, Puellam infra etatem decem annorum tum existent. insultum fe-

cit & adtunc & ibidem eandem A. P. felonice ac carnaliter cognovit ac eandem A. P. nequiter abusus est contra pacem, &c. Dyer 304.

It was a Doubt, whether a Rape could be committed on a Girl of Seven Years old; but if she had been nine Years, it was no Question. Dyer 304.

Gr. Car. 332.

† If under ten Years, then tho' she consent 'tis a Rape, by 18 Eliz. cap. 6. if above ten Years, then not consenting at first, tho' she consent afterwards, is likewise a Rape. No Clergy, 18 Eliz. cap.

Anno 9 Car. One Martin Page was indicted at the Old Bailey, for that he carnaliter cognovit an Infant, under the Age of † Ten Years. At his Trial the Jury would not find him guilty, because it was not proved he entered the Body of the Child; but he having very much abused her, the Court ordered an Indictment of Battery to be exhibited against him, which was tried at the Bar; and he was found guilty, and fined 100 Marks, and ordered to stand in the Pillory, &c. and to be bound with Sureties for his Good Behaviour during Life, and committed during the Queen's Pleasure.

No Clergy, 18 Eliz. cap.

Recog.

Recognizance.

THIS is a Bond of Record, testifying, That the Party oweth to the Queen a certain Sum, &c. upon the Non-performance of a Condition.

'Tis Matter of Record as soon as it is taken or acknowledged, tho' it be not made up, but only entered in the Justice's Book; and therefore for a Breach of it an Indictment will not lie, but a *Scire Facias*: Raym. 196.

When you take a Recognizance, it must be made in *Latin*, but the Condition is usually in *English*; the Name, the Place of Abode, and the Trade or Calling both of the Principal and Sureties, are to be punctually set down, and the Principal is to be bound in double the Sum which his Sureties are bound in.

When 'tis entered or made up, you read the Condition to the Parties bound, calling them by their Names, thus:

You acknowledge to owe unto Our Sovereign Lady the Queen, &c.

These Recognizances are to be engrossed in Parchment, to which the Justice subscribes his Name, but the Persons bound need not set their Hands to it.

Where a Justice has Power to take a Recognizance, if the Party refuse to be bound, he may commit him. 11 Rep. 52.

'Tis expedient for the Justice to keep a Book, in which he ought to enter his Recognizances, thus:

J. O. de H. in 20 l. ad comparand. ad proximas Assisas or Session' Pacis (as the Case is) bound over for the suspicious stealing of an Horse from R. S.

Sureties { B. W. & L. } to l.
 { R. N. & B. }

This is Discretionary in the Justice, before whom the Recognizance is acknowledged, and when once taken, if he is deceived in the Ability of the Sureties, he may compel the Party to put in more; but this is when the Recognizance is taken *ex Officio*, and not by Vertue of a *Supplicavit*.

These may not enter into Recognizance, but their Sureties only, if 'tis for keeping the Peace.

Justices cannot award Process, but these Records must be certified into B. R.

Number and Sufficiency of the Sureties.

Feme-Covert and Infants. Process thereon.

These

Certifying
them.

These are to be certified, notwithstanding the Demise of the Queen, or Death of the Cognizor, or of the Party at whose Suit they are taken; nay, though they are released.

See Recognizance in Title Behaviour.

If they concern any Evidence against Felons, they must be certified the next Gaol-Delivery. 2 & 3 Phil. & Mar. cap. 10.

What Acts shall be a Forfeiture.

Armour, going armed.
Assaulting any one.
Battering Persons.
Burglary, committing it.
Imprisonment, if false.
Manslaughter, and the Procurers.
Murdering any one.
Peace, breaking it.
Ravishing of a Woman.
Robbery committed.
Riotously assembled.
Threatening in the Presence.
Treason done.
Wounding, tho' at Play.

Cro. Eliz.
36.
4 Inst. 180,
187.

And generally whatever is a Breach of the Peace, is a Forfeiture of the Recognizance.

But opprobrious Words, as to call a Man Liar, Knave, &c. are not a Breach of the Good Behaviour, so as to make a Man forfeit his Recognizance; for tho' such Words may be Provocations to break the Peace, yet they do not immediately tend to it, as Assaulting and Threatening do.

What not.

Beating, in Defence of his
Child.
Father.
Goods.
Master.
Mother.
Possessions.
Way, in Defence thereof, if ancient.

Discharge thereof.

If not forfeited, 'tis discharged by the Demise of the Queen, or Death of the Cognizor; but if the Sureties die, the Recognizance is good against their Executors.

By a Release of the Party *in tenui*, or by the Justice himself, to be written under the Recognizance; the Form thereof, see in Release, Title Behaviour.

Form of the Release of the Party is,

Suffex ff.

M Emorand. quod 27 die Augusti, Anno Dom. 1702.
J. O. venit coram me W. N. Arm. an. Justiciarius
Domina Regina ad pacem in Com. predicto conservand. assign. &c.

Recognizance.

475

*gratis remissis & relaxavit quantum in se est præd. securitatem pa-
cis per ipsum præfat. R. R. præs. In cuius rei Testimonium
ego præfat. W. N. huic relaxationi sigillum meum apposui. Da-
tum, &c.*

This Release being certified by the Justice, the Person is discharged from Appearance, because the Recognizance was to preserve the Peace; which being discharged by the Release, the Appearance is likewise discharged.

A Recognizance.

Suffex ff. **M**emorand. quod 27 die Augusti, Anno Regni, Do-
mina nostra Annæ, &c. quinto, J. O. de H in
Com. præd. Yeoman, & T. P. de H præd Husbandman & R. B.
de H. præd. Husbandman, venerunt coram me W. N. arm. un.
Justiciar. dicti Dom' Reg' ad pacem in Com. præd. conservand. assign.
& recognoverunt se debere dictæ Dom' Reg' videlicet præd. J. O.
& T. P. seperatim in decem libris & præd. R. B. in viginti li-
bris bone & legalis monete Angliæ de bonis & catallis terris &
tenementis suis seperatim fieri & levare ad opus dictæ Domina
Regina Hæred. & Successor. si defecerit in conditione infra-
scripta.

THE Condition of this Recognizance is such, That if
the above-bounden R. B. shall Personally appear in
Court at the next General Quarter-Sessions of the Peace, to
be held, &c. to answer unto such Matters as shall be then and
there objected against him by R. S. of, &c. concerning an
Assault and Battery, lately made upon the said R. S. by the
above-bounden R. B. and concerning some other Misdemean-
ours tending to the Breach of the Peace; and that if he
do not depart without Leave of the Court, then this Recogni-
zance to be void, otherwise to be and remain in Force and
Vertue.

A Condition of a Recognizance for a Misdemeanour.

Suffex ff. **T**HE Condition of this Recognizance is such,
That if the said J. O. shall Personally appear be-
fore the Justices of the Peace, at the next General Quarter-
Sessions of the Peace, to be held for, &c. and shall then and
there answer unto such Misdemeanours which shall be ob-
jected against him, and that he do not depart without Leave
of the Court, then this Recognizance to be void.

One

Recognizance.

One Justice out of Sessions may take a Recognizance of

- Alehouse-keepers, suffering unlawful Games, and selling of Ale without Licence, viz. to appear at Sessions.
- Behaviour, to be of good Behaviour.
- Hawkers in Corn, to appear at Sessions.
- Logwood, suspected Persons using in Dying.
- Partridges, those who take them to appear.
- Peace, those who break it.
- Pheasants, convicted of destroying them, viz. not to offend again.
- Witnesses against a Felon, to appear at Sessions.

Mco. 555.

There are other Recognizances which are not proper to be mentioned here, only I must say, That 'tis a great Misdemeanour to intice an *Infant* to enter into such Recognizance for Goods, knowing him to be an *Infant*, for which Offence one *Hicks* was fined 100 l. and committed.

Recusants,

ARE those who refuse or deny Supremacy to the Queen, by adhering to the *Pope* as Supream Head of the Church.

Before I enter upon the Statutes which inflict Penalties upon them, I think it requisite to acquaint the Reader with the Progress made by H. 8. in reducing the Power of the Court of *Rome* here.

Anno 24 Hen. 8. cap. 12. the Parliament prohibited Appeals to *Rome*, declaring in the Preamble, That the Crown of *England* was Imperial, and that the Nation was a compleat Body, with a full Power to administer Justice in all Cases.

25 H. 8.

The next Year he appointed, That *Convocations* should be assembled by his Writ, and that no *Canons* or *Constitutions* should be executed, which were contrary to his Prerogative, or to the Laws of the Land.

In the same Year, an Act passed to restrain the Payment of *First Fruits* to the Court of *Rome*; and this being an apparent Diminution of their Revenue, was the Foundation of that Breach which afterwards followed between the King, and that Court.

Hist. Re-
form. Vol. I
fol. 118.

The Learned Bishop of *Sarum* tells us, That the Parliament being unwilling to go into Extremities, did remit the final ordering this Act to the King, viz. That if the Pope at a Time

Time prefixed, should either mitigate or put down the Payment of these *Annates*, that then the King by his Letters Patents might declare how much of the Act should be in Force, which was to take Effect accordingly.

But I do not find the Pope complied; and therefore in the next Year an Act passed, by which the *First-Fruits* of all Spiritual Livings were given to the King, &c. 26 H. 8.

In the same Year an Act passed, prohibiting *Investitures* of Archbishops or Bishops by the Pope; but that in a Vacancy the King should send his *Letters Missive* to a Prior or Convent, Dean or Chapter, to chuse another.

Likewise in the same Year, all *Licences* and *Dispensations* from the Court of Rome were prohibited, under Pain of *Premunire*; and that all *Religious Houses* should be under the *Visitation* of the King, by Commissioners to be appointed under the Great Seal.

But the *Supremacy* was not yet settled; for in a Session of Parliament, Anno 1534, which was in the 26th Year of his Reign, he was then declared to be *Supream Head of the Church*. Hist. Reform. 157.

But he did not exercise any Act of that Power till a Year afterwards, by appointing Sir *Thomas Cromwell* to be his Vicar-General in Ecclesiastical Matters, and Visitor of all the *Monasteries* and other Privileged-Places in the Kingdom. This was the first Act of his Supremacy.

These Places were visited; and the next Year, which was Anno 1536, (the Parliament meeting in February 1535.) all the *lesser Monasteries*, under the Number of *Twelve Persons*, and whose Revenues were not of the Value of 200 l. per Ann. were given to the King, his Heirs and Successors; and a Court was erected on purpose for collecting the Revenues belonging to these Monasteries, which was called, *The Court of Augmentations of the King's Revenue*, who had full Power to dispose of those Lands for the Service of the King. 27 H. 8.

They proceeded in this Manner, viz. One *Auditor* of that Court was to call to his Assistance three discreet Persons of the County where the *Monasteries* were, and these were to acquaint those Houses with the Statute of *Dissolution*.

Then they were to give the Governor or any other Officer of the House an Oath, to declare the State and Condition thereof, and to require them to appear before the Court at a certain Day; and, in the mean Time, not to meddle with any Thing belonging to the House, except for necessary Subsistence, till farther disposed.

When he appeared before the Court, they were to assign him an Yearly Pension for Life.

These Persons were likewise to enquire into the Number of *Religious* in the House, and what Lives they led; how many would

would go into other Religious Houses, and how many into the *World*, as they called it.

They were to take an Account of the Buildings and Number of Servants belonging to the House; they were to secure the Seal of the Convent, and the Writings, Jewels and Plate; and all other moveable Goods; and to take an Inventory thereof, &c.

The Whole of these Goods were valued at 100000 *l.* and the Rents of these small Monasteries came to 32000 *l.* per *Annum*.

This occasioned great Discontents amongst the People, complaining of the Injustice of this Suppression; but to satisfy the Gentry, *Cromwell* advised the King to sell these Lands to them at low Rates, obliging them to keep up Hospitality.

This pleased both them, and the ordinary Sort of People for a little Time; and to satisfy others, there was a Clause in the Act, which gave the King Power to continue such Monasteries as he should think fit; by Vertue of which Power, he continued or gave back 31 Houses: But these, about two Years afterwards fell under the common Fate of the great Monasteries, and were all suppressed with them.

But notwithstanding he gave back some of these Houses, yet the People were still discontented, and openly rebelled in *Lincolnshire*; which was quieted by a Pardon: There was another Rebellion in *Yorkshire*, and the Northern Counties, which ended also in a Pardon, only some of the chief of the Rebels were executed for this last Rebellion.

The King being then free from Apprehensions of more Rebellions, appointed a new Visitation of all the Monasteries in *England*, there being but few suppressed by Vertue of the Act before-mentioned, because (as 'tis believed) the Visitors, being to make a Report to the Court of Augmentations of the State and Condition of the Monasteries they had visited; and after the Report made, a new Commission being to issue forth to suppress them, it happened that these Reports were made but a very little Time before the Rebellion broke forth; so that 'tis probable few of those Commissions were executed, because that would have enraged the People, and added Numbers to the Rebels.

29 H. 8.

But most of them seeing their Dissolution drawing near, made voluntary Surrenders of their Houses in the 29th Year of H. 8. in Hopes by this Means to obtain Favour of the King, and after the Rebellion upon the second Visitation, the rest of the Abbots, both great and small, did the like; for some of them had encouraged the Rebels, others were convicted by the Visitors, of great Disorder, and most of them had secured all the Plate, Jewels, and Furniture belonging

to their Houses, to make Provision for them and Relations, and then surrender'd their Monasteries; so that the greatest Part of them were voluntarily given up to the King.

Afterwards, *Anno 31 H. 8.* a Bill was brought into the House of Peers to confirm these Surrenders. There were 18 Abbots present at the first Reading it, 20 at the second Reading, and 17 at the third: It soon passed the Commons, and the Royal Assent; and by this Act reciting the voluntary Surrenders, &c. all the Houses, which from the 14th of *Febr. Anno 27 H. 8.* (which was the Time when the first Act passed, giving all the small Monasteries to the King) and all belonging to them which were since that Time suppressed, dissolved, relinquished, forfeited or given up, and all those which should be suppressed, &c. were confirmed to the King, his Heirs and Successors.

'Tis true, the Hospitallers, Colleges and Chantries, &c. were not yet dissolved; the Hospitallers were those of *St. John of Jerusalem*, which consisted of a Prior and his Fraternity, of which the Prior and two Chaplains were bound to be Churchmen: These had large Endowments to support themselves, and to entertain Pilgrims; the other Foundations were made up with Secular Priests, who had Pensions for to say Masses for the Souls of the Founders.

But notwithstanding the King was declared to be the Supreme Head of the Church; yet these Hospitallers would not submit, but maintained the Supremacy of the Pope against him, and abused his Majesty and the Parliament for making that Law, by which that Usurped Power of the See of *Rome* was extinguished; and therefore, *Anno 32 H. 8.* the Parliament gave their Lands to the King, and dissolved their Corporation.

The Colleges and Chantries still remained; but the Doctrine of Purgatory being then grown out of Belief, and some of those Fraternities having resigned in the same manner the Monasteries had done before them, the Endowments of the rest were then thought to be for no Purpose; and therefore, *Anno 37 H. 8.* all these Colleges, free Chapels, Chantries, &c. were given to the King, His Heirs and Successors, by Act of Parliament.

Thus in the Compass of a few Years, the Power and Authority of the See of *Rome* was suppressed in this Kingdom: And because frequent Attempts have been made by Papists to revive it, therefore in succeeding Times several Laws have been made, to keep them in Subjection, which I shall only mention.

Recusant Convict, above 16, must go to his Place of Abjuration, and not remove five Miles without Licence; or otherwise,

31 H. 8.
cap. 13.

32 H. 8.
cap. 24.

37 H. 8.
cap. 4.

Abjuration.

wife, not being a Feme-Covert, and not having Lands worth 20 Marks *per Annum*, or Goods worth 40 l. and not making the Submission mentioned in 35 Eliz. cap. 1. being required by a Justice of the Peace, must abjure before two Justices, &c.

Not departing within the Time limited by the Justices, or returning without the Queen's Licence, is Felony without Clergy. 35 Eliz. cap. 1.

Abode.

Must go to his Place of Abode, and not remove, as before, the Forfeiture is Goods for ever, and Lands during Life, tho' Copyhold; but in this last Case, the Lord of the Manor, if no Recusant or Trustee for him, shall have the Forfeiture; if the Lord be a Recusant, the Queen shall have it. 35 Eliz. cap. 1.

If he hath no Place of Abode, must go to the Place of his Birth, or where his Parents live, and within 20 Days after, give his Name to the Minister or Constable, &c. who is to enter it in a Book, and certify it next Sessions. 35 Eliz. cap. 1.

But he may go as far as he hath Licence from the four next Justices, under their Hands and Seals, with the Assent of the Bishop, or Depury-Lieutenant, first making Oath of true Reason of his Journey. 3 Jac. cap. 5.

Absolve.

To absolve, or be absolved by Bulls from the Bishop of Rome, is High-Treason; Accessories before the Fact are guilty of the same Offence. 13 Eliz. cap. 2.

Pretending Power to absolve any within the Queen's Dominions from their natural Obedience, &c. guilty of Treason. 23 Eliz. cap. 1.

Advowson.

Shall not be granted by a Popish Recusant Convict, whilst under Conviction. 3 Jac. 1. cap. 5.

If such a Recusant grant the Advowson for Years to a Friend in Trust, the Grant is void.

Any Papist or Popish Recusant convicted, as *per Statute* 3 Jac. cap. or disabled by refusing or neglecting to repeat and subscribe the Declaration mentioned in an Act 30 Car. 2. cap. 1. viz. I H. G. do solemnly, &c. when tendered by two Justices of the Peace, or forbearing to appear before them upon Notice to him given, or left at the usual Place of his Abode, by any one who hath Authority so to do, by Warrant under the Hands and Seals of the said two Justices, and shall thereupon have his Name, Sirname, and usual Place of Abode certified and recorded at the General Quarter-Sessions, shall be disabled to grant an Advowson. 1 W. & M. cap. 16.

Person seized in Trust for such Offender, shall be likewise disabled to make such Grant. 1 Will. & Mar. cap. 26.

Trustee or Mortgagee presenting or causing to be presented, whereof the Trust shall be for a Recusant Convict, or disabled without giving Notice to the Chancellors of Oxford or Cambridge, &c. within Three Months after Evidence, forfeits 500 l. to the respective Chancellors. 1 Will. & Mar. cap. 26.

Bringing an *Agnus Dei* hither, or offering it to any Person to be used, both he and the Receiver incurs a *Premunire*. 13 Eliz. cap. 2.

Of Popish Recusant Convict, shall be taken from him by Warrant from Four Justices of the County, &c. at General Session, &c. and kept where they think fit, and shewed at every Muster.

Refusing to deliver them, forfeits them to the Queen, and by Warrant from One Justice, &c. may be committed for Three Months. 7 Jac. cap. 6.

No Papist, or reputed Papist, refusing or making Default to subscribe the Declaration, (which see in *Adwovson*) shall keep any Arms, Weapons, Gunpowder or Ammunition, other than such which shall be allowed him by Order of Sessions, for the Defence of his House and Person.

Two Justices, &c. may by Warrant give Power to Persons in the Day-time to search for Arms, with the Assistance of the Constable, &c. in the Possession of any Papist, or so reputed, and seize them to the Use of the Queen, and must deliver them at the next Quarter-Sessions in open Court.

Papist, &c. not discovering his Arms to some Justice of the Peace, within Ten Days after Refusal, or making Default, to subscribe the Declaration, or hindring Persons authorized to search, shall be committed by Warrant from Two Justices, &c. for Three Months without Bail, and shall forfeit the Arms, and pay treble the Value to the Use of the Queen, to be appointed by Justices at the next Quarter-Sessions.

Persons concealing them, or hindering the Search, may be committed, (*ut prius*) and forfeit the treble Value.

Persons discovering Arms, &c. so as they may be seized, Justices at Sessions shall allow the full Value of the Arms being there delivered, to be assessed by Justices in Sessions, and be levied by Distress and Sale of Goods of the Offender. 1 Will. & Mar. cap. 26.

Baptism.—See Children of Recusants.

Beads.

Bringing them over, or offering them to any Person to be used, both he and the Receiver incur a *Premunire*.

But if the Person to whom offered apprehends the Offender, and brings him before a Justice of Peace, or acquaints him with his Name within Three Days after the Offence, or delivers the Beads the next Day after Receipt to a Justice of Peace, shall not incur the Penalty of 13 Eliz. cap. 2.

Books.

Selling, printing or importing, superstitious Books, forfeits 40 s. per Book, between the Queen, Prosecutor and Poor, &c. 3 Jac. cap. 5.

Two Justices, &c. may search Houses, &c. for such Books and Relicks, and burn them; but such which are of Value, must be defaced in open Sessions, and returned. 7 Jac. cap. 6.

Bibliaries,—See Books.

Bulls.
13 Eliz.
cap. 2.

Of Absolution, to obtain such from Rome is High-Treason; or to comfort or maintain those who obtain them, is a *Premunire*, that is, the Aider of such Offender.

After the Fact, *to the Intent to set forth, uphold or allow, the doing or executing the usurped Power of Rome.*

Dyer 363. a.

About Seven Years after the making this Statute, a Man was indicted for *aiding* another, knowing him to be a Maintainer of the Jurisdiction of the See of Rome, *contra formam Statuti præd.* But notwithstanding this Conclusion, the Indictment was quash'd, because it did not set forth, that he aided the Person *to the Intent* to set forth, uphold, or allow that Authority.

Burials.

Every Popish Recusant must be buried in Church or Church-yard, according to Ecclesiastical Laws, or his Executor or Administrator forfeits 20 l. 3 Jac. cap. 5.

Catechisms,—See Books, the like Penalty.

Children of Recusants,

Must, within a Month after their Birth, be baptized by a lawful Minister, or the Parent forfeits 100 l. if he outlive a Month; if not, then his Wife to pay the Forfeiture, to be divided between Queen, Prosecutor and Poor. 3 Jac. cap. 5.

But Protestant Children of Popish Recusants, not allowing them a fitting Maintenance suitable to the Ability of such Parents, shall have such Allowance as the Lord Keeper, &c. shall order. 11 & 12 Will.

Con-

Conforming before Judgment, except in Cases of Treason and Misprision, shall be discharged of Penalties. 23 *Eliz. cap. 1.*

The Son and Heir being no Recusant, or conforming and taking the Oath of Supremacy, his Lands are discharged from the Penalty incurred by his Ancestor. 1 *Jac. cap. 4.*

Conforming.

But not conforming after Sixteen, his Lands are not discharged till he conform.

Conforming after Conviction, must be within a Year afterwards, and so every Year receive the Sacrament, or forfeits 20 *l.* in the first Year, 40 *l.* the second Year, and 60 *l.* for every Default afterwards; and if once he hath received, and afterwards makes Default, he forfeits 60 *l.* between the Queen and Prosecutor. 3 *Jac. cap. 4. Cro. Jac. 365.*

Court.

Recusant Convict coming to Court without the Queen's Leave, forfeits 100 *l.* between the Queen and Prosecutor, and must not come within Ten Miles of London. 3 *Jac. cap. 5.*

Crosses.

See Beads.

Declaration.

Two Justices may tender the Declaration mention'd in the Act of 30 *Car. 2.* to any Papist, and if he doth not make and subscribe it, or shall refuse to appear upon Notice, (which see in Advowson) shall be liable to Penalties in the Act of 1 *Will. & Mar. cap. 15.*

Excommunicated.

Papish Recusant shall be reputed duly Excommunicated; and if he sue any Person, the Defendant may plead it in Disability, but he must aver the Plaintiff to be *Papalis Recusans.* 3 *Lev. 11.*

Executor.

Papish Recusant shall not be Executor or Administrator, or Guardian, but the next of Kin to whom the Land cannot descend shall have the Guardianship. 3 *Jac. cap. 5.*

Heme-To-berr.

Husband is not chargeable with the Forfeiture of the Wife for not receiving the Sacrament, as enjoined by 3 *Jac. cap. 4.* nor the Wife after his Death. 3 *Jac. cap. 4.*

Recusancy.

- Being a Popish Recusant Convict, and her Husband none, she not conforming by the Space of one whole Year before his Death, forfeits Two Thirds of her Jointure or Dower, and shall not be Administratrix or Executrix to her Husband, and shall be taken as a Person excommunicated. 3 *Jac. cap. 5.*
- feme-Co-vert. } Not conforming within Three Months after Conviction, may be committed by Two Justices till she conform, unless her Husband will pay to the Queen 10*s.* per Month, or a third Part of his Lands. 7 *Jac. cap. 6.* She shall not abjure the Kingdom. 35 *Eliz. cap. 2.*
- Guardian. — See Executor.
- Jesuits. — See Priests.
- Indictment. } Indictment against Jesuit, Priest, or other Ecclesiastical Person, is good, tho' he is not in the Kingdom; which Indictment being found, and he not returning after Proclamation, &c. 'tis as good as if a Verdict had passed against him. 27 *Eliz. cap. 2.*
- Jurisdiction Ecclesiastical. } Jurisdiction Ecclesiastical is annexed to the Crown, and he who maintains the Power of any foreign Prelate, &c. forfeits his Goods and Chattels, and if not worth 20*l.* at the Time of his Conviction, shall be committed for a Year without Bail.
- Second Offence is a *Premunire*.
- Third Offence is High-Treason. 1 *Eliz. cap. 1.*
- The two first of these Offences are inquirable by Justices in Sessions within a Year and a Day after they are committed. 5 *Eliz. cap. 1.*
- Maintaining the Jurisdiction of Rome, is a *Premunire*, Justices in Sessions may hear and determine it. 5 *Eliz. cap. 1.*

Dyer 281*b.* For the first Offence, there is a Forfeiture of Goods and Chattels; and Six Years after the making this Statute, one of the Queen's Subjects knowing it was written in Books beyond Sea against her Supremacy, and affirming the Jurisdiction of the See of Rome, imported and sold them here to some Persons who likewise had heard what was contained in them; the Importer was guilty within the Statute, but not the Buyer; but if a Man buyeth such Books, and reads them, and in Dispute maintains the Books to be good, this is an affirming the Jurisdiction, &c.

Justice of
Peace,

Must acquaint a Privy-Counsellor within
Fourteen Days after he shall have Notice
of the Offender's bringing hither Crosses,
Beads, &c. or offering them to be used, or
incurs a *Premunire*. 13 *Eliz. cap. 2.*

Ladies Psal-
ters.
Legends.
Manuals.

Not acquainting a Privy-Counsellor within
Twenty-eight Days, after a Jesuit or Priest,
&c. shall be discovered to him, forfeits
200 Marks. 27 *Eliz. cap. 2.*

See Books.

Marriage.

Popish Recusant convict of marrying other-
wise than according to the Form of the
Church of *England*, shall not be Tenant by
the Courtesie; and if there is no Land of
which he can be Tenant, &c. shall forfeit
100 *l.* to the Queen and Prosecutor; if a
Woman, she shall not have her Dower
or Jointure, or Widow's Estate. 3 *Jacobi*
* *cap. 5.*

Mass.

Saying Mass, forfeits 200 Marks; hearing it,
100 Marks; and may be committed for a
Year, not to be enlarged till the Fine is
paid; one Third of the Forfeiture is to
the Queen, another to the Prosecutor, the
other to the Poor, &c.

Prosecution may be before Justices in Sessi-
ons, but it must be within a Year and a
Day after the Offence. 23 *Eliz. cap. 1.*

Discovering a Priest or Persons at Mass with-
in Three Days after Notice of the Offence,
so as any be taken and convicted or at-
tainted, shall have the Third Part of the
Forfeiture. 3 *Jac. cap. 5.*

Mass.

The King pardoned the Conviction, the Que-
stion was, Whether the Person pardoned
should be disabled to present so long as he
remained a Recusant; because the Statute
of 3 *Jac. cap. 5.* is, That every Popish Re-
cusant convict shall be disabled during the
Time he remains a Recusant, but doth not
say convict; but it was adjudged that the
Word convict should go through the whole
Sentence. 3 *Lewins* 333.

Mass.
Primers.

See Books.

* See In-
dictment
for this Of-
fence.

Dyer 203. a.

231. b.

Three In-
dictments
against a
Man for
hearing
three Mas-
ses on seve-
ral Days, he
shall pay
but 100
Marks, and
not so ma-
ny for eve-
ry Offence.
Dyer 21. b.

Recusancy.

Jesuits, Seminary Priests, &c. and other Ecclesiastical Persons, born within the Queen's Dominions, and made such by the Bishop of Rome, coming in, or remaining in the said Dominions, are guilty of Treason, and the Receivers, Aiders and Maintainers of them, knowing them to be such, are Felons. 27 Eliz. cap. 2.

Any knowing a Priest or Jesuit to be here, and not within Twelve Days afterwards discovering him to a Justice of Peace, shall be committed and fined. 27 Eliz. cap. 2.

Priest.

A Jesuit must make such Submission as is mention'd in the Act of 35 Eliz. cap. 2. and if he refuse to answer, shall be committed till he complieth. But making Confession, (as in the Act) shall be discharged; but relapsing afterwards, takes no Benefit of that Law. 35 Eliz. cap. 2.

The Person who within Three Days after Notice of the Offence shall discover to a Justice of Peace a Recusant, or him who doth entertain a Popish Priest, Jesuit, &c. shall be pardoned, and shall have a Third Part of the Forfeiture; so that the whole forfeited doth not exceed 150 l. and if above that Sum, then shall have 50 l. which after Conviction of the Offender, by a Certificate from the Court where he was tried, directed to the Sheriff or other Officer, shall be paid out of the Money levied.

Presentation.
See Pardon.

Shall not present to a Benefice, or grant the next Avoidance, but the Chancellors of Oxford and Cambridge shall have it; but they must not present one already beneficed. See Advowson. 1 W. & M. 26.

Portals.

See Books.

Permitted.
See Absolved.

And per Stat. 3 Jas. cap. 4. to move any one to promise Obedience to the See of Rome, or other Prince, is High-Treason in the Mover, and he that promiseth Obedience.

Recu-

Recusant
Condict.

Must not remove Five Miles from his Abode,
(*Vide* Abode.)
Must not come to Court, (*Vide* Court.)

Must not practise the Art of

Apothecary,
Civil-Law,
Common-Law,
Physick.

Or be an Officer in any Court, or amongst Soldiers, or in a Castle, Fortress or Ship.

The Penalty is 100 *l.* to be divided between the Queen and Prosecutor. 3 *Jac. cap. 5.*

Rosaries. — See Books.
Sacrament. — See Conforming.

Sending Relief to any brought up in the Seminaries, are guilty of a *Premunire*.
Those who are brought up there not in Orders, and not returning within Six Months after Proclamation made for that Purpose, and submitting themselves to the Queen within two Days after their Return, either before the Bishop of the Diocese, &c. or Two Justices, &c. and taking the Oath of Supremacy, &c. are Traitors. 27 *Eliz. cap. 2.*

Seminaries,
and Sending beyond Sea.

Sending Persons beyond Sea to be instructed in Popish Religion, forfeits 100 *l.* and the Persons sent are made incapable to take any Grant of Inheritance either to themselves, or to any in Trust for them. * The Forfeiture is to be divided between the Queen and Prosecutor. 1 *Jac. cap. 4.*

* But per 11 & 12 W. the Forfeiture is to the Discoverer, and the Person convicting.

Children shall not be sent beyond Sea without Licence from the Queen, or Six of her Privy-Council, whereof the Principal Secretary of State to be one; and the Person sent is made incapable of enjoying his Lands by Descent or Grant, until, being of the Age of 18 Years, he take the Oath of Allegiance before some Justice of the Peace of the County where his Parents do or did dwell; and in the mean Time his next of Kin (not being Popish Recusants) shall have his Lands and Goods.

He that goes out of the Kingdom, forfeits 100 *l.* between the Queen, Prosecutor and Poor. 3 *Jac. cap. 5.*

He who enjoys the Lands of such a Child, &c. shall be accountable to him when he conforms, 3 *Jac. cap. 5.*

Going beyond Sea, or being sent thither to be brought up in the Popish Religion, and being convicted thereof, shall be disabled to sue, or to be Executor or Administrator, or capable of a Legacy or Gift, or to bear any Office, and forfeits all his Goods and Chattels, and also his Lands and Offices during his Life.

But conforming within Six Weeks after his Return, shall not be punish'd. 3 Car. 1. cap. 2.

11 & 12 W.

Notwithstanding all these Laws, the Parliament was of Opinion that Popery encreased; and therefore to prevent its Growth, a Law was made, That if any Person should take one or more *Popish Bishop, Jesuit or Priest*, and prosecute him till he is convicted of *saying Mass*, or of exercising any other Part of the Office or Function of a *Popish Bishop or Priest*, then such Person shall have a *Certificate* under the Hand of the Judge or Justices before whom the Party is convicted, certifying such Conviction, and that he was taken by the Party, &c.

This Certificate must be carried to the Sheriff of the County within Four Months after the Conviction, and after a Demand made, the Sheriff must pay the Taker 100*l.* and if any Dispute happen about the Right to this Reward, the Judge, &c. who certifies, &c. shall by such Certificate direct how it shall be shared.

If the Sheriff did or is removed before the End of Four Months, the succeeding Sheriff shall pay it within Two Months after Demand, and Certificate produced.

Sheriff not paying, forfeits 200*l.* to be recovered by the Party, his Executors or Administrators, in any Court of Record; but if he pay it, then upon producing the Certificate or a Duplicate, the Lord Treasurer shall pay it out of the Revenue of the Crown.

If any *Popish Bishop, Priest or Jesuit*, shall be convicted of saying Mass, &c. or any Papist shall keep School, &c. and be convicted, &c. he shall be adjudged to perpetual Imprisonment in such Place where the Queen, by Advice of her Council, shall think fit.

A Person educated in that Religion, and not taking the Oaths of Allegiance, &c. made *Anna 30 Car. 2.* within Six Months after Eighteen Years of Age, he shall be incapable (as to himself only) to inherit or take any Lands by Devise, Descent or Limitation; and that during his Life, or until he shall take the Oaths, the next of Kin, who shall be a Protestant, shall enjoy the Lands, and not be accountable for the Profits, but for Waste only.

Every Papist after the 10th of *April, 1700.* is made incapable of purchasing Lands, &c. either in his own Name, or in the Name of any Person to his Use, or in Trust for him.

And

And that after the said 10th of April, all Estates, Terms, and other Interests or Profits whatsoever out of Lands to or for the Use or in Trust for such Person, shall be void.

But Foreign Priests, not Natives nor Naturalized, officiating in Dwelling-Houses of Foreign Ministers, are exempted, so as they enter their Names in the Office of the Principal Secretary, and the Place of his Birth, and to whom they belong.

Indictment for asserting the Jurisdiction of the Pope.

Middl. ff. *Jur*, &c. quod J. O. nuper de, &c. in Com' prædict' Clericus, 8 die Septembris, Anno Regni, &c. apud H. in Com' prædict' scienter & malitiose in presentia diversorum dictæ Domine Regine subditorum affirmavit & defendit auctoritatem spirituales Papæ adtunc existen' Principis sive Personæ extraneæ & præsentis in hoc Regno Angliæ usurpatam in his Anglicanis verbis sequen' (Here recite the Words) * ea intentione extollere Auctoritatem Papæ prædict' in magnam derogationem Auctoritatis & Prærogativæ dictæ Domine Regine & contra Coronam & Dignitat' suas, necnon contra formam Statuti in hujusmodi casu edit' & provis' & quod T. P. de, &c. sciens præfat' J. O. verba prædict' locutum fuisse ac dictam Auctoritatem Papæ prædict' modo & forma prædict' extollere & defendisse præfat' J. O. apud H. prædict' postea scilicet nono die Septembris, Anno supradict' consolatus est & confortavit ex præposit' & ea intentione ut idem J. O. promoveret usurpatam Auctoritatem Papæ prædict' in perniciosum exemplum aliorum, ac contra Coronam & Dignitatem dictæ Domine Regine, necnon contra formam Statut' in hujusmodi casu edit' & provis', &c.

1 Eliz. c. 1.
5 Eliz. 1.
Prosecution must be within a Year after the Offence.
*Dyer 281, 363.

Judgment :
First Offence, per 1 Eliz. c. 1. Forfeiture of Goods
and Chattels, &c. Per 5 Eliz. cap. 1. 'tis a Præmunire.

For perswading and endeavouring to withdraw one from Obedience.

Suffex ff. *Jur*, &c. quod W. B. de L. in Com' prædict' Gen' nono die Septembris, Anno Regni, &c. apud L. prædict' in Com' prædict' voluntarie & proditorie conatus est & praticavit absolvere, persuadere & seducere quendam T. P. de L. prædict' in Com' prædict' subditum dictæ Domine Regine à naturali obedientia quam idem T. P. erga dictam Dominam Reginam gerere debet ad obedientiam prætense Auctoritatis sedis Romane dicen' eidem T. P. hæc Anglicana verba sequen' (viz. Here recite the Words)

1 Jac. c. 4.

contra

contra Pacem dictæ Domine Regine Coronam & Dignitatem suam,
& contra formam Statuti in huiusmodi casu edit. & provis. &c.

Against a Jesuit and his Receiver.

- 27 Eliz. c. 2. Suffex ff. Jur. &c. quod J. O. nuper de H. in Com. prædict. Clericus, natus apud H. præd. in Com. præd. & infra unum Annum jam ult. elapsus factus & institutus Jesuita per pretensam Authoritatem à sede Romana derivatam proditorie apud H. præd. in Com. præd. nono die Septembris & diversis aliis diebus tunc proxime sequen. * moratus est, & remanebat contra formam Statuti in huiusmodi casu edit. & provis. ac contra Pacem dictæ Domine Regine Coronam & Dignitat. suas, & quod R. L. de H. prædict. in Com. præd. Gen. scienter, voluntarie & felonice postea scilicet dicto nono die Septembris Anno supradicti præfat. J. O. apud H. prædict. in Com. præd. recepit, relevavit & confortavit dicto J. O. ad tunc & ibidem ad largum & extra Prisonam existens ac præfat. R. L. huiusmodi Jesuitam esse tunc & ibidem sciente & agnoscante contra formam Statut. prædict. & contra Pacem dictæ Domine Regine Coronam & Dignitatem suas.

* A Priest going to Ireland, was driven on Shore in England by Strefs of Weather, and immediately taken; and being indicted on

this Statute, was acquitted, because, properly speaking, he neither came or was sent hither. Raym. 377. Judgment: High-Treason in the Jesuit, Felony in the Receiver.

For Saying and Hearing Mass.

- 23 Eliz. c. 1. Suffex ff. Jur. &c. quod J. O. nuper de H. in Com. præd. Clericus, nono die Septembris, Anno Regni, &c. apud H. præd. in Com. præd. voluntarie dixit & celebravit Missam contra formam Statut. in huiusmodi casu edit. & provis. & contra Pacem dictæ Domine Regine Coron. & Dignitat. suas, & quod R. N. de L. in Com. præd. Gen. dicto nono die Septembris Anno supradicti apud H. prædict. in Com. prædict. voluntarie presens fuit tempore celebrationis & dictionis Missæ prædict. ac eandem Missam sicut præfertur dictam & celebratam ad tunc & ibidem voluntarie edidit contra formam Statut. prædict. & contra Pacem, &c.
- Judgment: For saying Mass, 200 Marks; for hearing it, 100 Marks.

Against one withdrawn from his Allegiance, &c.

- 3 Jac. c. 4. Berks ff. Jur. &c. quod W. P. nuper de N. in Com. prædict. Gen. natus apud C. in Com. præd. Deum præ oculis non habens, sed instigatione Diaboli seductus nono die Augusti, Anno Regni, &c. debitam legientiam suam erga dictam Dominam Reg-

Reginam minime ponderans apud N. præd' in Com' præd' à naturali obedientia sua quam erga dictam Dominam Reginam gerere debuit voluntarie & prædatorie absolut' reconciliat' & seductus fuit (Anglice, withdrawn) contra debitam ligeantiam suam & in contemptum dictæ Domine Regine & legum suarum, & contra Pacem dictæ Domine Regine Coronam & Dignitatem suam, necnon contra formam Statut', &c.

Judgment:
High Treason.

For wearing an Agnus Dei.

Suffex ff. } Ur', &c. quod T. G. nuper de F. in Com' præd' Gen' existen' subditus Domine Annæ nunc Regina, &c. nono die Septembris, Anno Regni dictæ Dom' Regine nunc quarto apud F. præd' in Com' præd' habuit & recepit de quodam A. B. nuper de C. in Com' præd' Gen' quandam rem vocat' Agnus Dei, quæ præd' A. G. à partibus transmarinis infra hoc Regnum Angliæ protulit sciens eandem rem vocat' Agnus Dei, fore sanctificat' sive consecrat' per Papam sive Episcopum Romanum in propria persona sua & quod idem T. G. præd' rem vocat' Agnus Dei, postea scilicet eodem nono die Septembris Anno supradicti & diversis aliis diebus & vicibus apud F. præd' in Com' præd' & diversis aliis locis superstitios' & contra ligeantiam suam gerebat & utebatur contra formam Statut', &c.

13 Eliz. c. 2.

Judgment:
Præmunire.

Against a Recusant for not causing his Child to be baptized at the Church.

Suffex ff. } Ur', &c. quod T. K. nuper de S. in Com' præd' Ar' nono die Septembris, Anno Regni, &c. existen' Papa-ri Recusans (Anglice, a Popish Recusant) prolem masculum infra Parochiam de S. præd' eodem nono die Septembris natum habuit & quod præd' T. K. eundem prolem masculum infra unum mensem proxime post natiuitatem ejusdem non causauit baptizat' fore per legitimum Sacerdotem (Anglice, a lawful Minister) in aperta Ecclesia Parochie præd' neque in aliqua alia Ecclesia adiacen' sive Casella ubi Baptisma communiter administratur secundum leges Regni Angliæ præd' prole masculo nullum haben' infirmitatem ratione cuius ad locos præd' afferri non potuit (Anglice, could not be brought) contra formam Statut' in huiusmodi casu edit' & provis' & contra Pacem dicti Dom' Reg' Coron' & Dignitatem suas.

3 Jac. c. 5.

Judgment:
Forteits
100 l.

Release, See Recognizance.

Rescous.

This is a Resistance against a lawful Authority, and by Violence taking away a Prisoner, or procuring his escape.

If

If the Person rescued hath committed *Felony*, and was arrested for it, then *rescuing* of him is *Felony*; but if he was not arrested, then the opposing or hindring any Person to apprehend him is a *Misdemeanour*, but no *Felony*.

But the Rescuer shall not be arraigned of the *Felony* till the Principal is attainted; and if he die before Attainder, the *Felony* is discharged; but he shall be indicted, fined and committed for rescuing him. *Hales Pl. Coron. 116.*

Sid. 332.

Indictment for a Rescous was *quod arrestavit*, without saying, & *in custodia sua habuit*, and for this Reason it was qualh'd; though in the same Indictment it was alledged, That the Defendant rescued him out of the Possession of the Bailiff.

Dyer 164.
B.

The Indictment was, That *Fisher* on such a Day and Year, &c. at *H.* feloniously cut a Purse, and took 40 s. and that he was arrested for the said *Felony* at *H.* aforesaid, and that the Bailiff had him then and there in his *Custody* until one *Fox* assaulted him, and then and there took him out of his *Custody*, &c. the Question was, Whether the Time of the Arrest and Rescous were certain by this Indictment? That is, Whether the Words *then and there* shall refer to the Arrest, or whether the Sentences were distinct? There were different Opinions in the Case, so it was not adjudged. But I can see no Reason why these should not be taken to be distinct Sentences, and that the Words *then and there* in the first Sentence should relate to the Arrest, and in the other to the Rescous.

2 Cro. 345.

An Indictment more incertain than the former was held good; as where *vi & armis* was omitted, and not supplied by *manu forti*, and the Place where the Rescous was made was likewise left out; yet it was held, That it must be intended to be in the Place where the Arrest was, and that the Word *rescussit* implies it was done with Force. 'Tis true, there is a Case where the Omission of the Words *vi & armis* made the Indictment ill; but then it doth not appear by the Book that the Word *rescussit* was in.

1 Bulst.
205.

An Indictment for a Rescous from a Sheriff's Bailiff.

Sufflex ff. *Ur'*, &c. *quod cum W. E. Ar' Vic' Com' S. prae' virtutis brevis Dom' Reg' sibi direct' fecit Warrantum suum pro ceptum suum in scriptis apud H. prae' in Com' prae' geren' dat' decimo die Septemb. Anno Regni, &c. & cuidam R. T. ballivo direct' ad capiend' quendam H. B. de H. in Com' prae' Gen' ff. & ad respondend' dict' Domine Regin' de diversis transgr' & temporibus per ipsum perpetrat ad sectam S. B. in Concilio*

dicta Domina Regina apud Westm. prout breve illud in se exigebat. virtute cuius quidem Warranti præd. R. T. postea scil. undecimo die Septembris, Anno Regni, &c. supradicto apud L. in Com. præd. cepit & arrestavit præd. H. B. & ipsum sic in custodia ipsius R. T. adtunc & ibidem existen. quidam J. O. de L. præd. in Com. prædict. Yeoman, postea scil. dicto undecimo die Septembris, Anno supradict. vi & armis, &c. apud L. præd. in Com. præd. in & super præfat. R. T. insultum fecit & ipsum R. T. adtunc & ibidem verberavit, vulneravit & maletraxavit & prædict. H. B. a custodia dicti R. T. adtunc & ibidem vi & armis resussit in malum exemplum aliorum in huiusmodi casu delinquen. contra pacem dictæ Domine Regine nunc Coron. & Dignitatem suas.

For Rescuing of a Felon from a Constable.

Suffex ff. **J**ur', &c. quod cum quidam H. P. de L. in Com. prædict. Ar. undecimo die Septembris existen. un. Justiciar. dictæ Domine Regine Com. sui Suffex ad pacem in eodem Com. conservand. necnon ad diversas felonias transgr. & alia malefacta in eodem Com. perpetrat. audiend. & terminand. assign. præd. undecimo die Septembris, Anno supradicto apud L. in Com. præd. quoddam Warrantum sive præceptum in scriptis fecit & cuidam J. O. de H. in Com. præd. Yeoman, adtunc Constabular. de Parochia de H. præd. in Com. præd. direxit & deliberavit per quod quidem Warrantum præfat. J. O. sic ut præfertur Constabular. existen. præceptum sit quod caperet corpus cuiusdem H. B. de H. in Com. præd. Gen. & præfat. H. B. coram præd. H. P. vel uno alio Justiciar. pacis in Com. præd. duceret & haberet ad examinand. præfat. H. B. pro felonica captione viginti ovium de Bonis & Casalibus cuiusdam R. C. cui quidem J. O. Constabular. præd. postea scil. præd. undecimo die Septembris, Anno supradicto apud H. præd. in Com. præd. virtute Warranti præd. eundem H. B. cepit & arrestavit & ex causa præd. adtunc & ibidem in custodia ipsius J. O. habuit. Et quod quidam R. C. de H. præd. in Com. præd. Gen. satis sciens præd. H. B. per præfat. J. O. Constabular. præd. sic ut præfertur fore arrestat. & in custodia sua esse postea scil. præd. undecimo die Septembris, Anno supradicto apud H. prædict. in Com. prædict. vi & armis adtunc & ibidem eundem H. B. a Custodia præd. J. O. felonice cepit & resussit & ad largum quo voluit ire permisit in magnum dictæ Domine Regine contemptum & in malum exemplum aliorum in huiusmodi casu delinquen. necnon contra pacem dictæ Domine Regine Coron. & dignitat. suas.

For

For Rescuing one put into the Stocks upon Suspicion of Felony.

Kanc. ff Jur', &c. quod ii die Septembris, Anno Regni, &c. quidam J. O. de H. in Com' S. præd' Yeoman, apud L. in Com' præd' captus & arrestatus fuit per T. P. de H. præd' pro suspitione cujusdam felonie, viz. pro furatione unius equi ipsius T. P. & quod idem J. O. immediate postea traditus fuit præf. T. P. cuiusdam W. V. tunc Constabular' Hundredi de S. in quo sita est villa de H. qui quidem Constabularius postea scilicet dicto undecimo die Septembris, Anno supradicto apud H. præd' in Com' præd' præf. J. O. in Cippis posuit ad eum salvo ibidem custodiend' donec idem Constabularius parare posset auxilium ad ducend' præf. J. O. curam aliquo Justiciar' pacis dicta Domina Regina pro Com' præd' examinand' ac quod postea scilicet præd' undecimo die Septembris, Anno supradicto quidam J. S. de H. prædict'. Faber Ferrarius vi & armis, &c. Cippos præd' apud H. prædict' fregit & eundem J. O. tunc ibidem in Cippis prædict' existentem ex causa præd' felonice cepit, eripuit & rescussit & ad largum quo voluit ire permisit contra pacem, &c.

Restitution of Stolen Goods:

AT the Common Law, the Owner of Goods stolen could not have Restitution upon an Indictment against the Felon, though he was freshly pursued, because the Prosecution was at the Suit of the King; it was otherwise upon an Appeal, because that was at his own Suit.

Noy 128.

But this is now remedied by the Stat. of 21 H. 8. cap. 11. for if the Felon be found guilty, or attainted at the Prosecution of the Party robbed, or Owner of the Goods, the Justices have Power to award Restitution of the Goods stolen.

Noy 128.

A Man stole Cattle, and sold them in open Market, the Sheriff seized the Thief and the Money, and he was convicted and hanged at the Prosecution of the Owner of the Cattle, and he had Restitution of the Money: For though the Statute gives Power to the Justices to award Restitution, &c. of the Goods stolen; and tho' the Money in this Case was not stolen, yet because it did arise by stealing, it shall be within the Equity, though not in the very Words of the Statute.

3 Inst. 242.

This my Lord Coke calls a Beneficial Law, because it gives the Party robbed a more speedy Remedy than by Way of Appeal, which before this Statute he ought to bring, or he could have no Restitution: And because 'tis beneficial therefore it hath been held to extend to the Executors or

Administrators

Administrators of the Party, though they are not mention'd in the Statute.

In some Cases there can be no Restitution, as if the Felon sells the Goods in a Market, &c. and is afterwards convicted, the Property is alter'd by the Sale; or if he waive them and escapeth, and 'tis not known who he was, the Lord having seized, the Owner cannot have Restitution, because the Felon cannot be indicted or attainted; but if Plate is sold in a Scrivener's Shop, it shall be restored upon Conviction, &c. because such a Shop is not a proper Market for such Goods.

1 And. 344.
Moor 360.

But notwithstanding the Cases abovementioned, the Practice hath been otherwise ever since 4 & 5 Car. 1. for if the Criminal is convicted at the Prosecution of the Party who lost the Goods, he shall have Restitution, though they were sold in a Market-Overt; and if the Party who bought them pleads it to a Writ of Restitution brought, the other upon a Demurrer to such Plea will have Judgment.

This Resolution tends to the Advancement of Justice to make Men vigilant in prosecuting Offenders, and it will discourage Persons from buying Goods for a small Value in a Market, of such whom they have Reason to suspect, Keeling 48. Coke's *Magna Charta*, 714.

But if Goods are stolen, and not waived in Flight, or seized by a proper Officer, there the Party may take his Goods again, though he doth not prosecute; but if waived or seized, the Party shall have no Restitution till Conviction at his Prosecution, and even in such Case he shall have no more than what is mentioned in the Indictment, tho' other Goods were stolen at the same Time; and the Reason is, because by such Omission the Offender might have escaped.

Riot.

THIS is where three or more meet, to do an unlawful Act with Force, and accordingly execute the same; for if they do not, 'tis only an unlawful Assembly.

But it can be no Riot, except there is a precedent Intent to do an unlawful Act, and that with Force.

Assembly } Meeting together, and they know not for what.
— Requiring People to assist him, &c.
— Requiring People to assist him, &c.
— Meeting at these Sports.

What Persons meeting in Numbers shall not make a Riot.

Cards.

- Cards. — Meeting to play at Cards.
 Constable. — Assembling Persons to assist him, &c.
 Dancing. — }
 Dice. — } Persons meeting at these Sports.
 Foot-ball. — }
 Infants. — } Meeting in Numbers, not incited by a Man of Discretion.
 Jury. — Falling out, and fighting.
 May-day, and } Meeting to dance, or to be merry on those Days.
 Midsummer. }
 Numbers — } Of Men meeting to carry away a Thing of Burthen to which one claims a Right, tho' he hath none, so as they use no threatening Words.
 Sheriff — Assembling Persons to assist him.
 Sports. — Meeting to play at any Sport.
 Stage-play. } Causing a great Number to meet, 'tis a Riot.
 Roll. 109.
 Servants. — } No Riot in them if they go with their Master, who intends to commit a Riot, and they are ignorant of his Intentions.
 Threaten'd. } Threaten'd to be beaten in his House, if he get a Company to defend himself, otherwise if threaten'd to be beat going to Market.
 Women — Meeting in Numbers.

Whether one
Justice
may do.

Having Notice of a Riot, he must endeavour to remove it; he may bind the Rioters to the good Behaviour, and if they have no Sureties, or refuse to be bound, he may commit them; and if the Justice neglects, he is to be fined; and the Two next Justices to the Place where the Riot was committed, forfeit 100 *l.* to the Queen if they neglect (*having Notice*) to suppress a Riot.

One Justice sitting in a Judicial Place, and seeing a Riot, may record it upon his own View, which is not traversable, because he then acts as a Judge, but 'tis otherwise if he do not sit in such Place.

Whether he
cannot do.

But when a Riot is over, he cannot meddle, but only proceed against the Offenders as Trespassers against the Peace.

Whether the
2 Justices
must do
upon the
Stat. of
13 H. 4. c. 7.

He cannot *Fine* them, for this must be done by Two Justices, by Vertue of the Statute of 13 H. 4. cap. 7.

They ought to send to the Sheriff or his Deputy, who by that Statute seem to have a concurrent Jurisdiction with them in Fining the Offenders; and therefore upon a Writ

of Error brought, the Judgment was reversed where a Fine was set without the Sheriff. Raym. 388.

But yet 'tis the Opinion of Mr. Lambert, that they without the Sheriff (if they see a Riot) may commit the Rioters; take away their Weapons, and Appraise them for the Use of the Queen, and justify the Beating and Killing, if opposed.

They may record what is done in their View, which being a Conviction, they may Fine the Offenders, and commit them till paid; but Mr. Dalton says, the best Way is to certify this Record into B. R. that they may be fined there.

If they escape being taken by the Justice, this Record being certified as aforesaid, Process shall issue out against them out of B. R.

The Justices may likewise graht a Warrant to take those who escape, and bind them to good Behaviour, or commit them when taken.

Several were indicted for a Riot in rescuing a Person from an Arrest near Charing-Cross, and were fined 500 l. and to stand in the Pillory.

The Justice have Jurisdiction of the Riot, or else they are not punishable.

Dyer 210.

Cro. Car. 306.

The Form of the Record of a Riot upon View.

Suffex II. **M**emorandum quod 29 die Septembris, Anno Regni Domine, &c. * Nos H. P. & G. N. Arm. duo Justiciar' pred. Domina Regina ad pacem in Com. pred. conservand. assign. & F. R. Baronetibus adiunctis Vicecomes ejusdem Com. ad gravem querelam & humilem supplicationem. T. B. de H. in Com. pred. Yeoman, in propriis personis nostris accessimus ad domum mansionalem prefat. T. B. in Paroch. de H. in Com. pred. & ad tunc & ibidem vidimus R. O. de H. pred. Labourer, & T. P. de B. in Com. pred. Yeoman, ac alios malefactores & pacis dicta Domine Regine perturbatores nobis ignotos (ad numerum septem person.) gladiis, baculis, pugionibus, bombardis & falcibus armatos & scilicet & rorse ad eandem domum aggregatos multa mala in ipsum T. B. comminantes in magnam pacis dicta Domine Regine perturbationem ac populi sui terrorem & contra formam statut. in hujusmodi casu edit. & provis. ac propterea nos prefat. H. P. & G. N. ad tunc & ibidem predicti R. O. & T. P. arrestari & proxime Gaola dicta Domine Regine in Com. pred. duci fecimus per visum nostrum & recordum convictos de illicita congregatione tumultu & riota pred. ibidem moraturos quousque finem dicta Domine Regine proinde fecerint. In cujus rei testimonium huic presenti Recordo nostro sigilla nostra apposimus, Dat. apud H. pred. Die & Anno supradicti.

* Or One Justice may make a Record, but not upon this Statute: The Record of One Justice is traversable; but not of Two, because 'tis pursuant to the Statute.

This Record must be certain as to the Time, Place, Number, Weapons, Manner, and other Circumstances, because

'tis a Judgment, and not traversable; for if upon Examination it appears to be no Riot, or that the Justices did not see it, yet the Parties are concluded.

But for Committing without Recording, or making a Record without Committing, the Justices forfeit 100 l.

Information against Two Justices for not enquiring into a Riot, and found against one of them, is good. *Roll. Rep.* 109.

fine.

After the Riot is committed, (if not within the View of the Justices) and the Rioters are gone, the Two Justices within a Month may make a Precept to the Sheriff to summon a Jury to enquire of it; and if 'tis found, then they may commit the Offenders, and certify the Inquisition into B. R. that they may be fined, which should not be less than 10 l. for the Principal. *Stiles* 303.

The Form of the Precept for summoning a Jury.

Two Justices within a Month after the Riot done.
13 H. 4. c. 7.

Sufflex ff. **H.** P. & W. N. Armigeri, duo Justiciar. Domina Regina ad pacem in & pro Com. præd. conservand. assign. necnon, &c. Vicecomiti ejusdem Com. salutem. Ex parte dictæ Dom. Regina tibi præcipimus quod venire facias coram nobis apud H. in Com. præd. 29 die Septembris prox. futur. viginti quatuor probos & legales homines de Com. præd. quorum quilibet habeat terras & tenementa infra Com. prædict. liberi tenementi ad annualem valorem viginti solidorum aut per Copiam Rotulorum ad annualem valorem viginti sex solidorum & octo denar. ultra omnes reprisas ad inquirendum pro dicta Dom. Regina ac pro indemnitate nostra in hac parte super sacramentum suum de quibusdam illicitis turbis & riotis apud H. præd. in Com. præd. super commissis et dicitur quodque retorneas super quamlibet personam impannellat. in exitibus viginti solid. per ipsos forisfaciend. si non compareant ut jurati sint ad inquirend. de præmissis ad diem illum & hic nullatenus omittas sub pena viginti librarum & habeas ibi tunc nomina jur. ill. & hoc præceptum Dat. sub sigillis nostris apud H. præd. vicesimo die Augusti, Anno Regni, &c.

The Form of the Inquisition.

Sufflex ff. **I**nquisitio pro Domina Regina capta apud L. in Com. præd. 29 die Sept. Anno Regni, &c. per sacramentum (of the Jury) proborum & legalium hominum de Com. præd. coram H. P. & W. N. Arm. duobus Justiciar. dicta Domina Regina ad pacem in Com. præd. conservand. necnon ad diversas felonias transgressiones & alia malefacta in eodem Com. perpetrata. audiend. & terminand. assign. qui quidem Juratores super sacramentum suum præd. dicunt quod R. O. de H. in Com. præd. Yeoman, & alii malefactores

malefactores & pacis Domine Regine perturbatores juratoribus præd. ignoti vicesimo die Septembris ult. elaps. vi & armis, viz. Baculis, gladiis, pugionibus, bombardis, falcastris & aliis armis invasivis in messuagium H. R. in Paroch. de H. præd. inter horas decimam & undecimam pomeridiano ejusdem diei illicite & riotose intraverunt & in ipsum H. R. insultum fecerunt verberaverunt & vulneraverunt in magnam pacis dictæ Domine Regine perturbationem & populi sui terrorem ac contra formam statut. in hujusmodi casu edit. & provis.

This Enquiry within the Month must be intended of great Riots; for by Vertue of their Commission, the Justices may enquire into small Riots at any Time afterwards, so that the Limitation of a Month seems to prevent the Forfeiture of 100 l. by the Two next Justices, in Cases of great and notorious Riots, they neglecting to make Enquiry within that Time.

But if they enquire afterwards, the Indictment shall not be quashed for that Reason, because a Riot is an Offence at Common Law, and the Statute is not Penal, but only Directory to the Punishment. *Sid. 186.*

After the Riot is found upon this Inquisition, the Justices may award a *Venire facias* directed to the Sheriff of the County under their own *Teste*, commanding him to cause the Offenders to appear before them; (the Form thereof you may see before in Process on Indictments.)

This is only where the Offenders cannot be taken, and so if the Sheriff return *Non est inventus*, you may proceed to the Outlawry.

But if they appear, the Justices may fine them, and commit them till paid, or may take Sureties by Recognizance to pay the Fine, or may accept a Traverse; which Inquisition and Traverse must be sent to the next Sessions, or into B. R. there to be tried.

The Form of the Traverse, and the whole Record.

Suffex ff. **A** Lias, scil. ad Session. pacis tent. apud L. id Com. præd. die Jovis nono die Octobris Anno Regni Domine, &c. quinto, coram H. P. & W. N. Ar. & alijs socijs suis Justiciar. dictæ Domine Regine ad pacem in Com. præd. conservand. necnon ad diversas Felonias transgres. & alia malefacta in eodem Com. perpetrata. audiend. & terminand. assign. per Sacramentum duodecim probor. & legal. hominum jurat. & presentat. existis. quod R. O. de H. in Com. præd. & T. P. de B. in eodem Com. cum diversis alijs ignotis malefactoribus vi & armis, viz. Baculis;

Here recite
the Venire
facias.

The Clerk
of the
Peace.

Baculis, Gladiis, &c. 29 die Septembris inter horas decimam & undecimam pomeridiano ejusdem diei apud H. præd. clausum & domum ejusdem R. N. Riotose fregerunt & intraverunt & præfat. R. N. adtunc & i' id. verberaverunt contra pacem dictæ Domine Regine & contra formam Statut. in hujusmodi casu edit & provis. per quod præcept. fuit Vic. Com. præd. quod non omitteret, &c. posteaque, scil. decimo nono die præd. Mensis Octobris Anno supra dicto coram præfat. Justiciar. venerunt præd. R. O. & T. P. in propriis personis suis & habit. audit. indictament. præd. sepealiter dicunt quod ipsi non sunt inde culpabiles & de hoc ponunt se super patriam & W. W. qui pro Domina Regina in hac parte sequitur, similiter, &c. Ideo veniat. inde jurat. coram Justiciar. dictæ Domine Regine ad pacem in Com. præd. conservand. assign. ad Session. pacis tent. apud L. die Jovis, &c. tunc prox. futur. tenend. qui nec, &c. ad recogn. &c. quia tunc, &c. Idem dies dat. est tunc præfat. R. O. & T. P. ad quam quidem Session. pacis tent. apud L. præd. in Com. præd. die, &c. coram dictis H. P. & W. N. Ar. & aliis sociis suis Justiciar. dictæ Domine Regine ad pacem in com. præd. conservand. necnon ad diversas felonias transgr. & alia malefacta in eodem Com. perpetrat. audiend. & terminand. assign. venerunt tam præfat. W. W. qui sequitur, &c. quam præfat. R. O. & T. P. in propriis personis suis & jurator. præd. per Vicecom. Com. præd. ad hoc impannellat. & exacti, viz. (Here name the Jury) similiter venerunt qui ad veritatem de præmis. dicend. jurat. dicunt super Sacramentum suum quod præd. R. O. & T. P. sunt culpabiles & uterque eorum est culpabilis de transgr. & Riota superius specificat. modo & forma ut superius versus eos supponitur. Ideo cons. est per Curiam quod præd. R. O. & T. P. capiantur ad satisfaciend. dictæ Domine Regine de finibus suis occasione transgr. & Riota præd. qui quidem R. O. & T. P. adtunc & ibid. present. in Curia præd. petierunt se ad finem cum dicta Domina Regina occasione præd. admitti & inde ponunt se seperatim in misericordia Domine Regine & finis ejusdem R. O. per Justiciar. præd. assess. est ad quinque libras & finis ejusdem T. P. assess. est per eosdem Justiciar. ad decem libras ad opus & usum dictæ Domine Regine, &c.

The Charges of the Justices and Jury are to be paid by the Sheriff out of these Fines, and therefore by the Statute of 2 H. 5. cap. 8. the Fines may be encreased, and an Indenture being made between the Justices and the Sheriff, he is to be allowed it in passing of his Accounts in the Exchequer.

Certificates.

If the Truth of the Riot cannot be found by this Inquisition, then within a Month afterwards, the same Justices and Sheriff must certifie into B. R. so much of the Fact as appears to them, together with the Names of the principal Offenders, and the Circumstances and Impediments why the Truth was not found *sub pena 20 l.*

This

This Certificate may be in *English* by way of a Letter, comprehending the whole Truth, with the Time, Place, &c. and if any material Thing be left out of the Inquisition, it may be supplied in the Certificate.

But if the Sheriff die, or the Justices are put out of Commission before the Certificate made, it cannot be done afterwards.

A *Mittimus* to the Gaol upon View, &c.

To the Keeper of, &c.

Middlesex ss. **U**Pon Complaint made unto us, H. P. and A. S. Esqs; Two of Her Majesty's Justices of the Peace for the County aforesaid, by T. P. of, &c. we did this present 30th Day of September, go to the House of, &c. and there we did see R. O. J. S. and others, assembled together in a riotous and unlawful Company at H. aforesaid, to the Terror of the People, and against the Peace of our Sovereign Lady the Queen, and against the Form of the Statute in that Case made and provided: We do therefore herewithal send you the Bodies of the said R. O. and J. S. they being convicted of the said Riot, and unlawfully assembled by our own View, Testimony, and * Record, commanding you the said Gaoler to receive them into your Custody, and safely to keep them until they shall from thence be delivered by due Course of Law. And hereof fail not, Given, &c.

Or this may be by One Justice.

* You may be sure to record it, *Ut prius.*

An Indictment for a Riot.

Suffex ss. JUR. &c. quod J. O. nuper de H. in Com. præd. Teoman, R. O. nuper de L. &c. & R. W. nuper de, &c. vicesimo nono die Septembris Anno Regni, &c. vi & armis, &c. viz. Baculis, Gladiis, &c. Riote & illicite seipsos ad perturband. pacem dictæ Domine Regina nunc apud H. præd. in Com. præd. assemblerunt & congregaverunt & sic assemblat. & congregat. existen. adtunc & ibidem in & super quandam T. P. in pace Dei & dictæ Domine Regina adtunc similiter existen. insultum fecerunt & ipsum T. P. adtunc & ibid. verberaver. vulneraver. & maletraxaver. & alia enormia ei intulerunt ad grave dampnum ipsius T. P. ac contra pacem dictæ Domine Regina coron. & dignitat. suas necnon contra formam Statut. in hujusmodi casu edit. & provis.

• Riot in cutting and carrying away of Corn.

Midd. ff. JUR. &c. quod J. O. nuper de H. &c. R. O. nuper de, &c. & T. P. nuper de, &c. Congregatis vii. quamplurimis aliis malefactoribus & pacis Domina Regina perturbatoribus ignotis ad numerum undecim personarum tricesimo die Septembris Anno Regni, &c. quinto, vi & armis, viz. Baculis, gladiis, bombardis & falcastris & aliis armis invasoris apud H. præd. in Com. præd. illicite & riotose assemblerunt & clausum cuiusdam T. R. apud H. præd. in Com. præd. adtunc & ibid. illicite fregerunt & intraverunt & duodecim carellas. feni ibidem nuper crescent. valoris, &c. de bonis & catallis præd. T. R. injuste riotose & routose asportaverunt contra pacem dictæ Domina Regina coram. & dignitat. suas, &c. & contra formam Statut. &c.

Riot in a Park.

Suffex ff. JUR. &c. quod R. O. de, &c. & T. P. de, &c. ut prius (at the Word Clausum) apud Clausum & Parcum cuiusdam J. S. Armiger. in R. in Com. præd. illicite riotose & routose sese assemblerunt & congregaverunt ad pacem dictæ Domina Regina perturband. & adtunc & ibidem in quendam W. M. Teoman, custodem parci præd. & in R. W. servien. præfat. J. S. in pace Dei & dictæ Domina Regina existen. insultum fecerunt & præd. R. W. cum quibusdam bombardis globulis plumbeis onerat. que idem R. O. J. O. & T. P. adtunc & ibid. habuer. & tenuer. vulnera erunt dantes eidem R. W. cum globulis plumbeis præd. in & super dextram partem pectoris sui unam plagam profunditat. dimid. pollicis & latitud. unius pollicis ita quod de vita ejus desperabatur, &c. & alia enormia eis intuler. ad grave dampnum ipsorum W. M. & R. W. & contra pacem, &c.

Riot for pulling down of Hedges, &c.

* If there is no Addition of Place, the Indictment may be quashed. 1 Bullf. 183.

Suffex ff. JUR. &c. quod R. O. * nuper de, &c. T. P. nuper de, &c. cum aliis malefactoribus sibi Congregatis & pacis Domina Regina perturbatoribus ad numerum viginti personar. per instigation & procuracion. ejusdem R. O. in magnum terrorem subditorum dictæ Domina Regina tricesimo die Septembris Anno Regni, &c. quinto, vi & armis, viz. Baculis, gladiis, bombardis & falcastris apud H. præd. in Com. præd. Clausum R. B. Ar. ibidem fregerunt & intraverunt & sepe ipsius R. B. ad numerum quadringent. pedum adtunc & ibidem irruerunt & prostraverunt & fossat. ibid. existen. adtunc & ibidem cum ligonibus & rustellis fuderunt & impleverunt ad grave dampnum ipsius R. B. & contra formam Statut. in hujusmodi casu edit. & provis. & contra pacem dictæ Domina Regina coram. & dignitat. suas, &c.

Robbery.

Robbery.

THIS is a felonious and violent taking *Money or Goods* from the *Person* of another, to any Value, putting him in Fear; for without putting in Fear, 'tis no Robbery. *Dyer 224.*

My Lord Coke tells us, That 'tis called *Robbery*, because Goods were taken *quasi de la robe*, that is, from the Person, as he calls it; but the learned Sir Henry Spelman gives us a different Account of the Word, *viz.* That in the Time of the Saxons, it was usual for Travellers to lodge in any Man's House for one Night; for in those Days they had but very little Money, and no Inns. That *Reab* in the Saxon Language signifies a Garment; and because Rogues did steal the Clothes of such Travellers, (for they had nothing else to lose) therefore they were called *Robatores*, and the Crime it self *Roberie*; so that at first it was not a taking from the Person, for the Clothes were usually stolen in the Night after the Traveller was at rest: But now it must be a Taking from the Person; and 'tis the Violence and putting in Fear distinguishes this Offence from a Cut-Purse, which is *Clam & Secrete*.

Now an Assaulting, without taking any Thing, is no Robbery.

But commanding the Person to deliver, and he doth it; this is a Taking and Robbery, tho' the Thief doth deliver the Thing taken back again.

So is compelling one to swear to bring him Money, and he doth it; if the Wife receives it, this is a Taking.

And all that are in Company, (tho' the Fact is done by One alone) are Principals.

Three come to rob B. and one doth the Fact out of the Sight of the other, who afterwards returns to them, 'tis Robbery in all. *1 And. 116.*

If being pursued, and endeavouring to escape, the true Man let his Hat or Money fall, and the Thief take it up; this is a Taking from the Person.

So is taking in his Presence, for in Law this is a Taking from his Person.

Assaulting one, and putting him in Fear, and then driving away his Cattle in his Presence; this is taking from his Person, and Robbery.

whether is
a Taking,
and what
not.

from the
Person.

Robbery.

By a late Statute, he who apprehends and prosecutes an Highway-man to Conviction, shall, within a Month afterwards, receive of the Sheriff of the County where the Robbery was committed 40*l*. producing the Certificate of the Judge or Justices before whom the Person was convicted.

And if any one is killed in taking a Highway-man, those who have a Right to administer shall have the 40*l*. and he who takes, prosecutes, and convicts, shall have the Horse, Furniture, Money, and other Goods of the Highway-man, unless stolen. 4 & 5 W. & M. cap.

Sid. 263.

The Hundred is chargeable if the Robbery is committed in the Day-time; and therefore if 'tis done in *January* after Sun-setting, or if a Highway-man compel a Waggoner in the Day-time to drive his Waggon out of the Way, and then robs him in the Night, this shall likewise be a Robbery in the Day, because the first Seizure was a Robbery, and the Hundred in both Cases shall answer it.

Indictment for Robbery.

Suffex ff. JUR. &c. quod R. O. nuper de H. in Com. præd. Libourer, tricesimo die Septembris Anno Regni Domine, &c. quinto, vi & armis inter horas octavam & nonam pomeridiam ejusdem diei in alta via Regia juxta quendam locum vocat. &c. in Parochia de H. in Com. præd. in & super quendam T. P. de H. præd. in Com. præd. Teoman, in pace Dei & dictæ Domine Regine adtunc & ibid. existens. insultum fecit & quinq; libras legalis monete Angliæ in pecuniis numeratis de bonis & catallis præd. T. P. adtunc & ibidem invent. a persona ipsius T. P. adtunc & ibidem violentè & felonice cepit & asportavit in magnum præd. T. P. terrorem ac contra pacem dictæ Domine Regine coron. & dignitat. suas.

Sabbath.

THE Observation of this Day is not only a Divine Command, but a very wise and politick Constitution, for it gives a Countenance to Christianity, and keeps bad Men from growing worse.

The Prophanation of this Day, doth generally arise from,

1. Covetousness:
- Or,
2. Licentiousness.

First, From a covetous Desire of Gain, as *per Stat. 1 Jac. 1. cap. 11.* Shoemaker putting Boots or Shoes to Sale, forfeits 3 s. 4 d. and the Goods: Then by the Statute of 3 Car. 1. cap. 1. Carriers, Drovers, Waggoners, travelling on that Day, such are prohibited under the Penalty of 20 s. for every Offence.

Butchers killing or selling, or causing to be kill'd or sold, or privy or consenting to kill or sell Meat on that Day, forfeits 6 s. 8 d. for every Offence. 3 Car. 1. cap. 1.

The Proof must be before One Justice by Two Witnesses upon Oath, or by Confession of the Party, unless the Fact was done in view of the Justice.

Prosecution within Six Months after the Offence.

These Forfeitures are recoverable by Distress on a Warrant, or by Bill or Information in Sessions, to the Use of the Poor where taken.

But tho' the Driving is through several Parishes, yet there shall be but One Forfeiture for One Day.

By 29 Car. 2. cap. 7. the Conviction is made more easie; and by this Statute, publick and private Duties of Piety are enjoined, all worldly Business is prohibited, and all above the Age of 14 Years offending in the Premises, forfeits 5 s. to the Use of the Poor; but the Justice may reward the Informer out of the Penalties, so that it doth not exceed the Third Part.

Drovers, or their Servants, coming to their Inns on that Day, forfeit 20 s. for every Offence.

The Prosecution must be within Ten Days after the Offence.

The Proof by One Witness upon Oath before One Justice, and if the Offender is not able to pay the Forfeiture, he must be put in the Stocks for Two Hours.

Secondly, Irreligious Licentiousness: *Per 1 Car. 1. cap. 1.*

Meeting together out of their own Parish for any Sports or Pastimes, they forfeit 3 s. 4 d. each.

Prosecution must be within a Month, &c.

Proof by one Witness before One Justice, or Confession of the Party.

Forfeiture is for the Poor of the Parish where the Offence is committed, and to be levied by Distress on a Warrant, &c. and in Default thereof, the Offender is to be put in the Stocks for Three Hours.

Any Process served on this Day, except for Breach of the Peace, Felony, or Treason, is void; and the Person serving the same, must answer Damages as if he had done it without a Warrant. 29 Car. 2. cap. 7.

But this Statute doth not extend to dressing of Meat in Inns, Cooks Shops, or Victualling-Houses. All

Sabbath.

All the Laws for frequenting of Divine Service on this Day, are still in Force, notwithstanding the Statute of 1 W. & M. cap. 18. unless Persons go to some Congregations tolerated by that Act.

A Warrant to levy the Forfeitures on such who use Sports on that Day.

To the Constable, &c.

1 Car. 1. c. 1.
One Justice
upon View,
Confession
or Oath of
one Wit-
ness.
Prosecu-
tion must
be within a
Month af-
ter the Of-
fence.

Suffex ss. **W**Hereas T. P. of, &c. J. O. of, &c. and R. S. of, &c. have been lawfully convicted before me, That they, and each of them, did on the 8th Day of November last past, being the Lord's Day, meet and were present with a Concourse of other People out of their own Parishes, for Sports and Pastimes, viz. to play at Football (or as the Case is) contrary to the Laws in that Case made and provided, by Reason whereof each of the Persons before-mentioned have forfeited 3 s. 4 d. for the Use of the Poor of your Parish: These are therefore in Her Majesty's Name to command you forthwith to levy the respective Sums of 3 s. 4 d. on the respective Goods and Chattels of the several Offenders before-mentioned, by Distress and Sale thereof, rendering to them the Overplus, if any; and in case no such Distress can be had, that then you cause the said Person or Persons, wanting such Distress, to be set publickly in the Stocks for the Space of Three Hours. Given under my Hand and Seal, &c.

To levy the Penalty on Persons travelling on that Day, &c.

To the Constable, &c.

* 3 Car. 1.
cap. 1.
One Justice
ut prius,
but by the
Oath of
Two Wit-
nesses.
Prosecu-
tion must
be within
6 Months;
but per 29
Car. 2. c. 7.
10 Days.

Suff ss. * **W**Hereas it hath been duly proved before me, That J. A. of L. &c. being a common Carrier, did on the 8th Day of November last past, being the Lord's Day, travel with his Horses into and through your said Parish of L. contrary to the Statute in that Case made and provided, by Reason whereof he hath forfeited 20 s. to the Use of the Poor of the said Parish. These are therefore, &c. to command you forthwith to levy the said Sum of 20 s. on the Goods and Chattels of the said J. A. by Distress and Sale thereof, rendering to him the Overplus; and that you see it employ'd to the Use of your said Parish, as by Law it ought. Given under, &c.

To levy the Penalty on a Butcher killing Meat on that Day.

To the Constable, &c.

Suffex ss. WHEREAS it hath been duly proved before me, That T. P. of, &c. Butcher, did on Sunday the 8th Day of November last past, in the Parish of, &c. kill (or sell, as the Case is) Victual, viz. one Calf, contrary to the Law in that Case made and provided, whereby he hath forfeited 6 s. 8 d. to the Use of the Poor of the said Parish of, &c. These are therefore, &c. to command you forthwith, &c. (as in the former Warrant.)

One Justice, Two Witnesses on Oath.

To levy the Penalty for exposing Goods to Sale, &c.

To the Constable, &c.

Suffex ss. WHEREAS it hath been duly proved before me, That J. O. of, &c. did on Sunday the 8th Day of November last past, expose Apples, &c. to Sale at, &c. contrary to the Law in that Case made and provided, whereby he hath forfeited the said Goods to the Use of the Poor of the said Parish, &c. These are therefore, &c. to require you forthwith to seize the said Goods so put to Sale as aforesaid, and that you sell the same, and employ the Money arising by such Sale to the Use of the Poor of your said Parish, as by Law it ought. And hereof fail not at your Peril. Given, &c.

29 Car. 2. cap. 7. One Justice, One Witness. Prosecution within Ten Days. Forfeits the Goods and 5 s.

But crying and selling of Milk, and Works of Necessity and Charity, are excepted.

To levy 5 s. on those who use a Trade on that Day, or any Worldly Labour.

To the Constables and Church-wardens of, &c.

Suffex ss. WHEREAS it hath been duly proved before me upon Oath, That J. S. and T. U. both of the Parish of, &c. Barbers, (or as the Case is) and being of the Age of 14 Years and upwards, did exercise the Work of their ordinary Callings or Trades, at, &c. on the 15th Day of this Instant November, being the Lord's Day, by Reason whereof each of them hath forfeited the Sum of 5 s. for the Use of the Poor of the said Parish. These are therefore to require

29 Car. 2. cap. 7. One Justice, One Witness on Oath. Prosecution within Ten Days after the Offence.

quire you forthwith to levy the said respective Sums of 5 s. on the several Goods and Chattels of the Offenders before-mentioned respectively by Distress and Sale thereof, rendering to them severally the Overplus (if any shall be), and that you employ the same towards the Relief of the Poor aforesaid, according to the Statute in that Case made and provided; but in case of Inability of either or any of the said Offenders to pay the said Penalties, or in Default of Distress to be had and taken on his or their Goods, that then you cause such Persons to be set in the Stocks for the Space of Two Hours. And hereof fail not, &c.

A Warrant to levy 5 s. on those who do not come to Church, &c.

To the Constable or Church-wardens of, &c.

29 Car. 2.
cap. 7.
One Justice, One
Witness
on Oath.
Prosecution within
Ten Day.

Suffex ss. **W**Hereas it hath been duly proved before me, upon Oath, That T. U. J. T. and J. O. all of the Parish of, &c. Labourers, and all of them being of the Age of 14 Years and upwards, that they and each of them did neglect to apply themselves to the Observation of the Lord's Day, being the 15th Day of this Instant *November*, neglecting also to exercise themselves on the Lord's-Day aforesaid in the Duties of Piety and Religion publickly, either in the Parish-Church of, &c. or in any other Assembly of Religious Worship, by Reason whereof they and each of them have forfeited the Sum of 5 s. for the Use of the Poor of the said Parish. These are therefore, &c. (as in the former Warrant.)

A Warrant to Officers neglecting their Duties herein.

To the Constables, Church-wardens, and Overseers of the Poor of the Parish of, &c.

Suffex ss. **W**Hereas I have been inform'd, That the Lord's-Day is often prophaned in your Parish by disorderly Meetings of several idle Persons, and by Gaming, Sports, and Tippling on that Day, and likewise by several other Means contrary to the Laws in that Case made and provided; and that you have been very negligent of the respective Duties of your Offices to find out such Offenders, and to apprehend and bring them to Punishment. These are therefore to charge and require you, That from henceforth, and so long as you shall continue in your respective

pective Offices, that you take a strict Account of all Persons within your respective Liberties or Parishes, who shall prophane the said Day by any unlawfully Ways or Means whatsoever; and that you make known to one or more Justice or Justices of the Peace for the said County, the Name or Names of such Person or Persons who shall offend in the Premises, within Ten Days after the Offence committed, that such Penalties may be inflicted on him or them, as the Law in that Behalf shall require. And hereof fail not, &c.

Sacrament.

Deviating or doing any Thing in contempt of the Sacrament, must be committed.

Three Justices may take the Examination of Two Witnesses on Oath concerning the said Offence, and bind them in a Recognizance of 5 l. apiece to appear at the next Sessions and give Evidence; and the Offender being found guilty, is to be fined. 1 Ed. 6. cap. 1.

The Prosecution must be within Three Months after the Offence. See the Statute at large.

Saltpetre-Men, and Salt.

Cannot dig in the House of another Person without his Consent, by reason of the Danger which may happen to the Owner, his Family and Goods, by Thieves and Robbers in the Nighttime, the House being open.

Lord Mayor and Aldermen before May 1696, and Justices of Peace after August 1696, may in Sessions set and publish in Writing the Prices of Salt, and afterwards (if necessary) they may in Sessions correct the Prices: Any Person selling at a higher Rate, or refusing to sell at that Rate, forfeits 5 l. for every Offence, to be levied by a Warrant of one Justice, between Queen and Prosecutor; if no Distress, Commitment 'till paid. 7 & 8 W. cap. 31.

Salt.

By the Statute 9 & 10 W. 'tis enacted, That if any Subject shall ship any Salt, and have paid the Duty, and the Vessel shall be taken or perish at Sea; that in such Case the

9 & 10 W.

the Owner of the Salt, upon Proof made before the Justices in Sessions of the Loss of such Salt, shall receive a Certificate from the Sessions that such Proof was made before them, and he producing it to the Officer appointed to collect the Duties on Salt, shall be permitted to buy the like Quantity of Salt (which is expressed in the Certificate to be lost) without paying any Duty for the same.

And to prevent Exactions in the Sale of Salt, the Lord Mayor of London and Court of Aldermen, within the Bills of Mortality, and the Justices of Peace in Sessions, may set and publish in Writing the Price of Salt to be sold or exposed to Sale, and may alter and correct the Prices thereof; and any Person selling at a higher Price, or refusing to sell at the Price so set, forfeits for every Offence 5 *l.* to the Queen and Informer.

The Penalty is to be levied by a Warrant from the Lord Mayor, &c. or of one Justice by Distress, &c. or in Default thereof, the Party may be committed by like Warrant till he pay the same. Persons dealing in Salt, or making it, and those who buy it to sell again, shall not dispose of it but by *Weight*, after the Rate of 56 Pound-weight to the Bushel, and not by Measure, under Penalty of forfeiting five Pounds to the Informer for every Offence.

This is to be determined by Two or more Justices residing near the Place where the Forfeiture shall be made, or where the Offence shall be committed, who are to summon the Party accused; and upon his Appearance or Contempt, to examine the Fact, and upon Proof made by the Oath of Two Witnesses, or by Confession of the Party, to give Judgment, and to issue out Warrants for levying the Forfeitures, which may be sold, if not redeemed within Six Days; and for want of Distress, they may commit the Party until he pay the Forfeiture.

But there lies an Appeal from this Sentence to the next Sessions, whose Judgment shall be final.

When Salt is entered to be put on Board, or to be carried by Land, and the Duty paid, or secured to be paid, and all other Money then or before due upon account of Salt before that Time delivered; the Officer upon Notice shall attend in the Day-time the weighing the Salt, and upon his Neglect or Refusal, forfeits 40 *s.* to be recovered as aforesaid.

By the Statute 5 & 6 *W.* a Duty of One Penny and Half-penny is laid upon Salt; and by 7 & 8 *W.* this Duty is continued for ever: But this is only for Salt made in England; for if Foreign Salt is imported, 'tis 3 *d.* per Gallon, per 5 & 6 *W.* and it must be paid in ready Money upon Entry made before the Landing, or by giving Security to pay it in Six Months, otherwise the same or the Value thereof is forfeited.

Duty on
Salt.

feited; but for Prompt-Money, the Importer shall have 10 *l.* per Cent. abated.

Salt conveyed away before Entry, may be seized without Warrant, and brought to the Office of the Collector of the Duty; and if not claimed within Ten Days after Seizure, it shall be forfeited and sold at the next general Sale, one Moiety to the Queen, the other to the Seizor; but if the Owner claims it within Ten Days, and doth not make it appear before the next Justice where the Seizure was made, and that by the Oath of Two Witnesses that the Salt was duly entered, it shall be forfeited as aforesaid, and he who conveyed it away shall forfeit double the Value. ; & 6 W.

If any Person is aggrieved by any Order or Judgment of Two Justices relating to the Duties on Salt, or to any Forfeiture or Offence concerning the same, they may appeal to Sessions, whose Judgment shall be final. 10 & 11 W.

By another Act, 1 *Anne*, every Maker of Salt, or Refiner of Rock-Salt, or Proprietor of Salt-Works, must make an Entry in Writing of the same at the next Salt-Office to their Pits or Works, and of the Number of Pans, and Situation of their Ware-houses, or forfeits 40 *l.* Erecting or using any Salt-Work, without giving Notice thereof at the next Salt-Office, forfeits 40 *l.* 1 *Anne*.

Refusing to permit an Officer for collecting the Duty, to enter into Works or Ware-houses in the Day or Night, in the Presence of a Constable, forfeits 40 *l.*

Salt found in the Possession of any Person, and not enter'd and the Duty paid, if 'tis Foreign Salt, 'tis forfeited; if *English* Salt, may be seized, and the Offender incurs the same Penalty and Forfeitures, as per 5 & 6 W. for removing or conveying away before Entry, unless he makes it appear upon the Trial in an Information, that he bought such Foreign or *English* Salt, and of whom.

Salt-Carrier, or other Person removing Salt from the Works without Entry made, and Payment of the Duty, the Salt may be seized by the Officers, and they may apprehend the Person and carry him before a Justice of Peace, and if the Offence is proved, and the Offender doth not pay down the Penalty, and hath no Distress whereon to levy it, the Justice may commit him to the House of Correction, to be whipp'd and kept to Labour for a Month.

Obstrusting, beating or abusing the Officers, forfeits 20 *l.* to be levied by Distress; and if that cannot be had, then to be sent to the House of Correction, as aforesaid.

No Salt-maker shall accompt as a Justice of Peace in any Matter relating to Duties on Salt.

By

2 & 3 Ann.

By another Act, the Importation of *Scotch* Salt is prohibited on Pain of forfeiting the Salt, and likewise 20 s. *per Buttel*, and the Persons importing it may be apprehended and brought before a Justice, where the Seizure shall be made; and if upon Proof of the Fact the Offender doth not pay down the Penalty, the Justice may commit him to Gaol for Six Months without Bail.

And where Salt is shipped in order to export it, and the Duty is paid, and the Vessel sinks before it shall go out of the Port; or if it is lost at Sea by Storm, or thrown Overboard to preserve the Men or Ship; then, upon Proof thereof made to the next Quarter-Sessions, the Court shall give a Certificate of such Proof; which being produced to the Collector of the Salt-Duty, he shall permit the Person to buy the like Quantity as expressed in the Certificate, without paying the Duty.

But the Statute varies in the Manner of its Proof, for where a Ship sinks in the Port, and the Salt perishes there, it says generally that Proof shall be made at the Sessions, &c. But in the other Case, where the Ship perishes at Sea, it directs how the Proof shall be made, *viz.* by Two Witnesses on Oath, whereof the Master or Mate to be one, and that it was not perished by Leakage or Neglect of the Seamen.

Scavengers.

THIS Title relates only to the City of *London*, by a new Statute of 2 *Will.* by which, Inhabitants within the Weekly Bills of Mortality in *Middlesex, Westminster, Southwark, and Kensington*, are enjoined to sweep their Streets every *Wednesday* and *Saturday*, or they forfeit for every Neglect 3 s. 4 d.

Laying Dirt, &c. in the Streets before their own Houses, forfeit 5 s.

Laying Ashes, Dirt, &c. before the Houses and Walls of other Persons, or before Church-Walls, or throwing any Noisome Thing in the Common-shore, High-way, or private Vault, forfeit 1 l.

The respective Church-wardens, and Keepers of Her Majesty's Palaces, and the Keepers of the Courts of Justice, suffer the like Penalties for the like Offences.

Hooping or cleansing Vessels in the Streets, mending empty Coaches, or sawing Timber or Stone, forfeit for every Offence 1 l.

Scavengers every Day, except Sunday or Holiday, must bring Carts, and give Notice of carrying away the Dirt, or forfeit 2 l.

Streets,

Streets, Lanes and Alleys paved at the making the Act, must be kept so at the Charge of the Inhabitants before their respective Houses, or forfeit for every Perch or Rod 1 *l.* And for every Week afterwards, till 'tis done, 1 *l.*

One Justice may certify to Sessions what new Ways are fit to be paved, and the Sessions may take such Order as they shall think fit, and the Inhabitants of Houses adjudged to be paved or mended, must do the same from such Houses to the middle of the Highway, or forfeit for every Perch not paved or mended 2 *l.* And for every Week afterwards, till done, 2 *l.* And when paved, &c. must be kept so, or forfeit 1 *l.* And for every Week afterwards, till done, 1 *l.*

Ancient Streets must be maintained according to Custom.

The Assessments for Scavengers of the Parishes of St. Anne and St. James shall be rated according to the Custom of the City; and new Houses hereafter to be built, shall pay proportionably with others.

Two Tradesmen must be chosen by the Constables, &c. on Monday or Tuesday in Easter Week Yearly, to be Surveyors of High-ways, who must take upon them the said Office seven Days after their Election and Notice, or for their Refusal, forfeit 1 *l.*

And then new ones must be chosen, who must take on them the said Office under the like Penalty, to be paid to such Surveyors who shall hold the Office, which must be employed towards repairing the High-ways; 'tis to be levied by Warrant of one Justice, &c. and in Default of Distress and Payment within six Days after Demand, the Offender must be committed.

Within 28 Days after new Scavengers are chosen, the old ones must Account before two Justices for the Money assessed and collected, and what remains in their Hands must be paid to the new ones.

Justices, &c. at Petit-Sessions, may give Scavengers Liberty to lodge their Dirt in vacant Places near the Streets, satisfying the Owners; and if their Demands are unreasonable, Justices, &c. may moderate it.

Persons aggrieved by a Tax, &c. or Determination of any Judges, &c. may appeal to the Sessions, whose Order is final.

One or more Assessments, not exceeding 4 *d.* per Pound for Lands, and 8 *d.* for every 20 *l.* of Personal Estate, may be made every Year by such Persons as the Sessions shall think fit, and the Money thus assessed shall be raised and employed according to their Direction; this is to be levied by Distress and Sale, &c. if not paid within 14 Days after Demand, rendering the Overplus, Charges deducted.

New Sewers made in any of the said Parishes since 12 Car. 1. shall be subject to the Commissioners of Sewers, who may direct making new ones, and alter any Nuisances, cross Gutters, and Channels in the Streets or Lanes.

Candles must be hanged out of such Houses which join to the Streets, from *Michaelmas* to *Lady-Day*, and from the Time it grows dark 'till Twelve of the Clock at Night, or forfeit 2 s. except the Inhabitants agree to use Lamps.

Trufs of old Hay exposed to Sale between the last of *August* and first of *June* following, must weigh 56 lb. and from *June* to *August* 60 lb. or forfeit per Trufs 1 s. 6 d.

Persons suffering Carts, &c. to stand loaded with Hay or Straw after Two of the Clock in the Afternoon, from *Michaelmas* to *Lady-Day*, for every Offence forfeit 5 s. and from *Lady-Day* to *Michaelmas*, after Three, forfeit 5 s.

Conviction of these Offences is to be by View of the Justice, &c. Confession of the Party, or Oath of one Witness; if by View of the Justice, then one half is to the Poor, &c. the other to Repair the Ways, otherwise to the Poor and Prosecutor.

These Penalties are to be recovered by Distress, &c. by a Warrant of one Justice, &c. to the Constable; or if no Distress can be taken, then if not paid within six Days after Demand, or Notice in Writing left at the House of the Offender by the Constable, must be committed till paid.

The *Wheels of Carts* must be six Inches in the Felley, and without Iron, and drawn only by two Horses after they are up the Hills near the Water. Owners offending, forfeit for every Time such Cart is used 2 l. for the Uses, and to be levied as aforesaid.

Country Carts, and carrying Goods half a Mile beyond the paved Streets, are excepted.

Swine must not be kept in the Houses or Back-sides of the paved Streets, on Pain of forfeiting them to the Poor.

Officers may in the Day-time, by Warrant from the Lord Mayor, or one Justice, &c. search for *Swine*, and drive them away and sell them, and deliver the Money to the Churchwardens, &c. for the Use of the Poor.

Cleansing of Streets, &c. must be managed according to ancient Usage of the City.

Lord Mayor, or any Alderman, may present upon View any Offence within the City and Liberties thereof, and may assess Fines not exceeding 20 s. for every Offence, to be paid to the Chamberlain of *London* for the Use of the City.

In Actions commenced for putting 22 & 23 Car. 2. Entitled, *An Act for the better Paving and Cleansing Streets in the City*, or this Act in Execution, the Defendant may plead the General Issue, and give the Act or Special Matter in Evidence; and if the Plaintiff is nonsuit, discontinue, or a Verdict against him, shall pay treble Costs.

High-ways leading from the East-side of *Clerkenwell-Green* to *St. John-street*, shall be paved as this directs.

Warrants.

It would very much enlarge this Title to make particular Warrants for every Offence mentioned in this Act, therefore I think the following Directions may be sufficient :

Recite the Proof, *viz.* upon View, Confession, or one Witness.

The Offence, as near as may to the Words of the Act.

The Forfeiture, and for whose Use.

Then the Clause of Distress.

Schoolmaster,

NOT coming to Church, or not allowed by the Bishop of the Diocese, he who keeps or maintains such a Person, forfeits 10 *l.* per Month, and the Schoolmaster himself shall be ever disabled to teach Youth, and shall be committed for a Year without Bail.

The Prosecution must be at the Sessions, &c. within a Year and a Day after the Offence committed.

The Forfeiture is to be divided between the Queen, the Poor, &c. and Prosecutor.

But conforming before Judgment to the Bishop of the Diocese, or in open Sessions, the Offence is discharged thereby, and also the Penalties thereon incurred. 23 *Eliz.* cap. 1.

None out of the Universities shall keep School, except a Free-School.

But he may keep School in Gentlemen's Houses, not Recusants; so he may if licensed by the Bishop, but not otherwise, if he doth, he forfeits 40 *s.* per Day. 1 *Jac.* cap. 4.

The Forfeiture to be divided between the Queen and the Prosecutor.

Indictment upon the Statute of 23 Eliz.

Suff. ff. **J**UR. &c. quod T. B. de P. in Com. præd. Ludimagister, à primo die Maii, Anno, &c. usque ad primum diem Octobris prox. sequen. in domo mansionali cujusdam J. L. apud P. præd. in Com. præd. pueros præfat. J. L. ibidem docuit & erudit, & ulterius jur. &c. quod idem T. P. durante tempore præd. non accessit ad Ecclesiam Parochialem de P. præd. nec ad ullam aliam Capellam sive locum Communis Precationis vel Conventum religiosa Adorationis per leges hujus Regni Angliæ tolerat. sed se penitus per totum tempus præd. abinde absentavit non habens legitimam suam sententia excusationem, nec per Episcopum Diocesis loci illius in qua sita est præd. Ecclesia Parochialis aut per ejus loci Ordinarium licentiatum sive allocatus fuit ad docend. & erudiend. & ulterius quod prædict. J. L. voluntarie in domo sua præd. custodivit & manutenuit præfat. T. P. per totum tempus præd. modo & forma præd. docentem & erudentem sciens ipsum T. P. modo & forma præd. se absentasse ab Ecclesia & non licentiat. esse docend. in contemptum dicte Domine Regine nunc Coron. & Dignitat. suas ac contra formam Statuti in hujusmodi casu edit. & provis.

Seamen.

2. Annæ.

TIS manifest, that the Increase of Seamen tends to the Advantage of this Nation both in Peace and War: and for this Purpose we have a Law, That Two Justices, or the Chief Magistrates of any City or Town-Corporate, with the Church-wardens and Overseers of the Poor of their respective Parishes, by and with the Consent of Two Justices, &c. to put Boys Apprentices to the Sea-Service under these Qualifications;

- (1.) They must be Ten Years old or upwards.
- (2.) Such as are likely to be a Charge to the Parish.
- (3.) Such whose Parents are actually chargeable to the Parish.
- (4.) Those who beg for Alms.

These may be bound to Masters or Owners of Ships or Vessels used in Sea-Service, till the Age of Twenty-one Years.

The Age of the Boy is to be inserted in the Indenture and that shall be taken to be his true Age, without any further Proof thereof.

The Church-wardens and Overseers shall pay the Master when the Boy is bound a *l.* 10 *s.* for Clothing and Bedding, which must be allowed by the Parish in their Accounts.

Such an Apprentice is not to be pressed till he is Eighteen Years old.

The Church-wardens must send the Counterpart of the Indenture to the Collector of the Customs in such Port, and it must be sealed by the Master in the Presence of the Collector and Constable where the Master doth belong, and attested by them; and such Collector must enter it in a Book, and shall endorse the Indenture that 'tis registred, and subscribe his Name without Fee, and forfeits *5 l.* if he neglects or refuses so to do, or makes a false Entry; and this Forfeiture is to be for the Poor of the Parish from whence the Boy was bound.

The Collectors must transmit unstamped Certificates to the Admiralty, of the Names and Ages of such Apprentices, and to what Ships they belong; and upon Receipt of such Certificates, Protections shall be granted till the Boy is Eighteen Years of Age, but then he may be pressed, and the Master shall receive his Wages.

Any poor Boy bound by the Parish to any other Employment, may with the Consent of Two Justices, &c. at the Request of the Master or his Executors, &c. turn over such Boy by assigning the Indenture to any Master or Owner of a Ship, &c. for the remaining Time of his Apprenticeship, which Assignment must be registred by the Collector as aforesaid.

And to oblige Masters and Owners of Ships to take such Apprentices, there is a Clause, That every Owner or Master of a Ship from Thirty to Fifty Tun shall take one Apprentice; and if he refuses, shall forfeit 10 *l.* to the Poor of the Parish from whence the Boy was to be bound.

The Apprentice thus bound, is to be sent to the Port to his Master at the Charge of the Parish, in the same Manner as Vagrants are by the Statute of 11 & 12 *Will.*

Two Justices, &c. near the Ports where any Vessel shall arrive, have Power to hear and determine all Complaints of hard Usage to such Apprentices, and to make such Orders as they are enabled to do in any Case between Masters and Servants.

The Collectors at their Ports are to keep a Register of the Names of Masters and Apprentices, and from what Parishes they came, and must transmit true Copies of such Register to the Quarter Sessions when required; and this they must do without Fee: If they refuse, they forfeit *5 l.* to the Poor of the Parish from whence the Apprentice comes,

And to encourage Boys voluntarily to bind themselves Apprentices, &c. they shall not be pressed for Three Years next after the Date of the Indentures.

And in order to suppress Rogues, Vagabonds and Beggars, there is a Clause, That all lewd and disorderly Servants, and such Men and Boys as are Rogues, Vagabonds and sturdy Beggars, shall be sent to Sea by Warrant from one Justice directed to the Constable, who is to convey them to the next Town out of the County into Her Majesty's Service at Sea.

The Forfeitures in the Act are to be levied by Warrant from Two Justices, &c. by Distress and Sale of the Goods of the Offender.

1 Annæ.

Casting away a Ship wilfully, or procuring the same to be done, is a Felon.

Servants, See Apprentices.

Sessions,

IS a Court of Record held before Two or more Justices, *Quorum unus.*

Time of
keeping it.

Formerly it was Discretionary in the Justices at what Time to keep this Court, which made it very incertain; but now by 2 H. 5. cap. 4. 'tis appointed to be kept Four Times in a Year, *viz.*

First Week after

{ Michaelmas.
Epiphany.
The Close of Easter.
Translation of St. Thomas the Martyr.

But Justices of *Middlesex* are not obliged to keep Sessions above twice in the Year; they may do it oftner if they think fit: And Justices of the County-Palatines of *Chester* and *Lancaster* are to keep Sessions only twice, *viz.* at *Michaelmas* and *Easter*. 32 H. 8. cap. 43.

Place of
keeping it.

This is not made certain by any Law, therefore 'tis left to the Discretion of the Justices.

If they should happen to be divided in Opinion about the Convenience of the Place, and some should appoint one Place, and some another, and the Sessions should be held at both Places, 'tis void in both, because the Authority of the Justices being equal, their several Appointments must be so likewise; and by the Nature of the Service there can be no Priority of Time.

The

The Sessions for *Anglesey* is to be held for ever at *Beaumaris*, by 5 Ed. 6. Dyer 135.

Two Sorts of Persons ought more especially to attend this Court, *viz.* those who are to serve there by Vertue of their Office, and those who are lawfully summoned : And these are, *Who ought to appear there.*

Bailiffs of Hundreds and Franchises, to give an Account of Sessions-Process.

Clerk of the Peace, to read the Indictments, to draw Process, and to enrol the A&ts of the Court.

Constables of Hundreds.

Coroners, because they are Parties to Exigents, and are likewise Conservators of the Peace ; for in some Cases they have Power to commit.

Correction, Master of that House to give a Calendar of such Rogues who have been committed, 7 Jac. cap. 4.

Custos Rotulorum, ex vi termini, he is to attend ; for he is alway a Justice of *Quorum*, hath the keeping of the Records of the Sessions, and of the Commission of the Peace.

Gaoler, with his Prisoners, and to receive those who may be committed by the Court.

Jurors returned by Sheriff.

Justices of Peace to certify their Recognizances and Examinations taken by them, and other Matters, &c. if they neglect, they may be fined by B. R. 3 H. 7. cap. 1.

Recognizance, those who are bound therein to answer, give Evidence, or prosecute.

Sheriff, or his Deputy, to receive the Fines set by the Court on Delinquents, and to return Jurors.

Freedom of Access is incident to a Court of Record as this is ; so that if any Person come voluntarily thither about any Business of the Sessions, as to prefer a Bill of Indictment, &c. or is compelled to appear to save the Forfeiture of his Recognizance, he shall be protected from Arrests upon mean Process ; and if he happen to be arrested, the Court may discharge him upon Examination of the Matter, and Oath of the Party himself. 1 *Levins* 159. *Privilege of those who come to Sessions.*

They may hear and determine Trespasses against the publick Peace, and upon Conviction give Judgment of Fine, or otherwise, as the Case requires. *Power of Justices in Sessions.*

It was the Policy of our Ancestors to establish several Courts in every County, not only for the speedy Administration of Justice, but to suppress Disorders in their first Motion,

tion, before they should arrive to such a Power as to disturb the Peace of the Neighbourhood.

This was the Business of County-Courts of Sheriffs, and of Tourns, and of *Leets*.

The Authority of those Courts declining for several Years, seems now to be devolved on this of the Quarter-Sessions, which yet maintains a Form of Judicature, though by Custom and Usage 'tis abated, as particularly in Cases of Felony.

For the Power which the Justices have, is either

| | |
|---|-------------------------|
| { | By Acts of Parliament ; |
| | Or, |
| { | By their Commission : |

But by both, they have Authority to try *Felons* ; for by 4 Ed. 3. cap. 2. they have Power to hear and determine Felonies, and to inflict Punishment according to Law ; and by the second *Assignarius* in their Commission, which relates only to the Sessions, they have Authority to enquire by a Jury, &c. of all *Felonies*, &c. and likewise of several other Articles therein mentioned ; and may send out Process against the Offenders to bring them in, and then try them, and give Judgment according to Law.

Now tho' they have this Power, yet the common Practice is to try only *Petit-Larcenies* at Sessions, and the *Felons* are of course carried to the Assizes by the Gaoler, who takes no Notice of this Court without particular Order.

'Tis true, where a Statute creates a Crime, and appoints before whom it shall be tried, in such Case, if the *Sessions* is not named, they have no Jurisdiction ; as in *Forgery* upon the Statute of 5 Eliz. which provides that the Indictment shall be taken before Justices of *Assizes*, and Justices of *Oyer and Terminer*, for they have an express Clause in their Commission *audiend. & terminand.* yet they cannot proceed in their Sessions against Offenders of this Nature, because there is another Commission of *Oyer and Terminer*, which is distinctly known by that Name : This was adjudged in my Lord *Sanchar's* Case.

5 Eliz. c. 14.
9 Rep. 118.

But there are many Things and Offences which by particular Statutes ought to be done and prosecuted in this Court, as *Ale-house-keepers*, whether they have forfeited their Recognizances. 5 & 6 Ed. 6. cap. 25.

Ale, selling it to an unlicensed Ale-house keeper. 4 Jas. c. 4.
Badgers offending against 5 Eliz. cap. 12. without Licence.

Bailiff taking more than 4 d. for an Arrest. 23 H. 6. cap. 10.

Bastards, seizing Goods and Lands of their Parents. 13 & 14 Car. 2. cap. 12.

Bridges, upon the Statute of 22 H. 8. cap. 5.

Buggery,

Buggery. 25 H. 8. cap. 6.

Bulls of Absolution, obtaining them from Rome. 13 Eliz.

cap. 2.

Busht sealed. 11 H. 6. cap. 8.

Carriage of Goods, Prices thereof. 3 & 4 W. & M. cap. 12.

Cattle, buying and selling contrary to 22 & 23 Car. 2. cap. 10.

Church, refusing to come thither for the space of a Month.

5 & 6 Ed. 6. 1. 23 Eliz. 1. 29 Eliz. cap. 6. 1 Eliz. 1. 5 Eliz. 1.

Church and Church-yard, striking there with Weapon.

5 & 6 Ed. 6. cap. 4.

Cloths unlawfully stretched with Ropes, &c. 39 Eliz.

cap. 20.

Common-Prayer, not using or abusing it. 23 Eliz. cap. 2.

Conies, Good Behaviour for killing them. 3 Jac. 1. cap. 13.

Licensing or prohibiting the Transportation.

13 Eliz. cap. 13.

Corn, Foreign imported. 1 Jac. 2. cap. 19.

Transporting into Scotland. 1 & 2 Ph. & M. cap. 5.

Correction Houses, Order for erecting of them. 39 Eliz. cap. 4.

7 Jac. cap. 4.

Cottages, erecting them contrary to 31 Eliz. cap. 7.

Counterfeit Letters, and getting Money by them. 33 H. 8.

cap. 1.

Curriers, 1 Jac. 22. 4 Jac. 6.

Escape of Felons. 1 R. 3. cap. 3.

Estreats of Sheriffs, controuling them by Justices. 11 H. 7.

cap. 15.

Fasants, taking them in the Night-time with Net, &c.

23 Eliz. cap. 10.

Fish, destroying them by Engines. 17 R. 2. cap. 9. 1 Eliz.

cap. 17.

Forestalling, regrating and ingrossing. 5 & 6 Ed. 6. cap. 14.

Forging Deeds. 5 Eliz. cap. 14.

Hawking or hunting in standing-Corn. 23 Eliz. cap. 10.

Stoned, feeding on Commons above two Years old,
and not 15 Hands high. 32 H. 8. cap. 13.

Horses, Property not altered, unless tolled. 2 & 3 Phil.
& Mar. cap. 7.

Hunting with Vizards in the Night time. 1 H. 7. cap. 7.

Jesuits, and those who harbour them. 27 Eliz. cap. 2.

Informers, exhibiting Suits in proper Person. 18 Eliz. cap. 5.

Innkeepers selling Victuals at unreasonable Prices. 21 Jac.

cap. 21.

Jurors levying Issues lost by them, 27 *Eliz.* 7. 39 *Eliz.* cap. 18.

Linnen made deceitfully, 1 *Eliz.* 2. cap. 12.

Logwood used by Servants in Dying, 39 *Eliz.* cap. 11.

Maſt, ſaying it, 23 *Eliz.* cap. 1.

Maſter and Apprentice diſcharging, 5 *Eliz.* cap. 4.

Mault, making it, 2 & 3 *Ed.* 6. cap. 10.

Maulſters, reſtraining their Number, 39 *Eliz.* 16.

Money falſe, concerning it, 3 *H.* 5. cap. 7.

Moſs Troopers, to ſuppreſs them, 29 & 30 *Car.* 2. cap. 2.

News falſe, telling it, 2 *R.* 2. cap. 5. 12 *R.* 2. cap. 11. 1 & 3 *Phil.* & *Mar.* cap. 3.

Perjury, upon the Statute of 5 *Eliz.* cap. 9. 29 *Eliz.* cap. 5.

Prifoners, { Tax made for Relieving them, 14 *Eliz.* cap. 51.
 Jac. 25.
 { Providing Materials to ſet them on Work,
 19 *Car.* 2. 4.

Prophecies, falſe and fantaſtical Publishing, 5 *Eliz.* cap. 15.
 Riots, Routs.

Rome, maintaining the Jurisdiction of that See, 1 *Eliz.* cap. 3.

Regues, { Incorrigible, convicted, may tranſport them,
 13 & 14 *Car.* 2. cap. 12.
 { Branding them, 1 *Jac.* cap. 7.
 { Banished, and returning without Licence, 39 *Eliz.*
 cap. 2.

Sacrament, abuſing it, 5 & 6 *Ed.* 6. 1 *Eliz.* 2. 3 *Jac.* 4.

Servant, aſſaulting Maſter, 5 *Eliz.* cap. 4.

Sheep, keeping above 120, or 20 Beaſts, &c. 2 & 3 *Phil.* & *Mar.* cap. 3.

Sheep, tranſporting them, forfeits his Goods, &c. 8 *Eliz.* cap. 3.

Soldiers maimed, relieving them by taxing of Pariſhes, 43 *Eliz.* cap. 3.

Soldiers wandring are Felons, 39 *Eliz.* cap. 17.

Tile making and ſelling, 17 *Ed.* 4. cap. 4.

Toll-Book, whether kept by the Owner of Fair, &c. 2 & 3 *Phil.* & *Mar.* cap. 7.

Viſſualers about limiting their Gains, and puniſhing them, 2 *Ed.* 6. cap. 15.

Under-Sheriff entring on his Office before he takes the Oath of Supremacy, 27 *Eliz.* cap. 12.

Uſury on the Statute of 13 *Eliz.* cap. 8.

Wages of Labourers, 15 *Eliz.* cap. 4.

Watchmen

Watches on Sea-Coasts, 5 H. 4. cap. 3.
Weights and Measures, 9 H. 5. cap. 8. 11 H. 7. 4. 8 H. 6.
 cap. 5. 11 H. 6. cap. 8.
Wine, Selling it without Licence, 7 Ed. 6. cap. 5.
Wool, conveying it from Place to Place, 13 & 14 Car.
 cap. 18.

Some Things are particularly enjoined to be done in *Easter*
 and *Michaelmas* Sessions, and cannot be done in any other :
 As,

In *Easter* Sessions :
 Assessing Relief to maimed Soldiers, 43 *Eliz.*
 cap. 3.
 Taxing the Wages of Labourers.
 Appointing Treasurers for County-Stock.
 Rating Parishes for charitable Use-money, &c.
 Assessing the Prices of Carriage of Goods.

In *Michaelmas* Sessions :
 Justices, who are to controul the Estreats of
 Sheriffs, must be chosen in *Michaelmas* Ses-
 sions by the *Custos Rotulorum*, or by the
 Eldest of the *Quorum*.
 Victuals, Prices thereof then rated, or at
Easter.

Strict Words are not required in an Order of Sessions as
 they are in an Indictment ; but Forms are necessary in the
 Proceedings ; and as to Fines imposed there, *B. R.* may miti-
 gate them. 1 *Vent.* 37.

The Sessions may fine a Jury for not finding a Bill upon plain Evidence ; the Jury in this Case were fined 10 l. Sid. 219.

And now I have mentioned Fines, it may not be altoge-
 ther improper in this Place to inform the Reader what grie-
 vous Fines and Punishments have been inflicted on Persons
 for Striking in *Westminster-Hall* : For as the Court of Sessions
 should act in Conformity to the great Courts there in the
 Distribution of Justice ; so where they are interrupted in the
 peaceable Administration thereof by Fighting in the Presence
 of that Court, the Punishment for such an Offence should
 bear some Proportion to that which is inflicted on Offend-
 ers for Striking in the Presence of the Courts above, which
 is thus :

ff. For striking a Man in the Face, and threatening to hang
 him, if he gave Evidence against a Felon, who was then to
 be tried in *B. R.* he was imprisoned during Life, to forfeit
 all his * Lands, Goods and Chattels, and that his Right Hand
 should be cut off ; which was done accordingly. Dyer 188.b.

* During
 Life.

For

Cro. Eliz.
405.
3 Inst. 140.
Cro. Car.
373.

For drawing his Sword on the Stairs going up to the Court of Requests, though it was out of the View of the Courts, Judgment to perpetual Imprisonment.

For Assaulting another in the Palace-Yard, sitting the Courts, Imprisonment during the King's Pleasure, and fined 1000 l.

In these Two last Cases there was no Judgment of cutting off the Right Hand, because the Facts were not done in the Presence of the Justices.

Sid. 229.

Then if before the Trial the Offender is bailed, it must be Body for Body, and formerly this Offence was punishable with Death.

Setting-Dogs, See Dogs.

Sewers.

THE Laws of Sewers are very ancient, though the first Statute concerning them, is that of 6 H. 6. cap. 5. for long before the making of that Law, the Kings of England might and did grant Commissions for the Surveying and Repairing Sea-Banks, Rivers, &c. and usually the Justices of Peace are made Commissioners: For which Reason, I shall enlarge upon this Title.

By the Common Law, the Queen hath,

1. *Imperium Regale* over the Sea, &c.
2. *Potestatem Legalem*.
3. *Proprietatem tam soli quam aque*.
4. *Possessionem & proficium reale & personale*.

The old Law-Books mention the Sea to be within the Legiance of the Queen, as of Her Crown of England, and being under Her Dominion: She and Her Predecessors have by Letters Patents granted to the Admiral of England Power in *causis Maritimis*.

Now no Man can delegate a Power which he hath not, and this shews the Lawfulness of it. She likewise grants to him, *Bona in mare dependita super mare emergentia & extra mare projecta*, which are Profits arising in the Sea.

The Queen therefore having this Sovereignty over the Sea, the Ground covered with the Waters doth of Right belong to Her, and by consequence 'tis as a Royal Escheat to the Crown when left dry.

But Lands which, *alternis vicibus*, are wet and dry, are not relinquished, and therefore may belong to the Subject, who may likewise have personal Profits arising on the Sea, as a free Fishery; so Tythes of Fish may be due to the Parson, and this (though not in a Parish) he may have either by Prescription or Custom, because these are Things which lie in Use, and this may be a Reason why the Subject cannot claim Ground covered with the Sea, because it cannot be bounded by Custom or Prescription.

Lords of Mannors may be entitled to Lands between High and Low Water-mark, because such Lands lie dry every Day.

But to prevent the Inundations of the Sea, the Statute of 23 H. 8. c. 5. 23 H. 8. was made, which was a Temporary Law, but made Perpetual by 3 Ed. 6. cap. 8.

In this Law, there is a Form of the Commission (which must be under the Great Seal) and the Oath of the Commissioners, who are a Court notwithstanding that Word is not named in the Statute, for they are called *Justices*; they have Power to make Orders which have the Force of Judgments, and Writs of Error have been allowed to reverse such Judgments; they may issue out Process to compel the Performance of their Orders, and therefore in † Gregory's Case they are allowed to be a Court of Record, but then there must be Six of the Commissioners which shall Sit by Vertue of this Statute.

* But not since this Statute, March 19. 1671.
† 6 Rep.

They cannot intermeddle, unless it be in Cases of publick Prejudice as well as in publick Streams; for if they decree a Stream to be straiten'd, so that the Meadows of a particular Person were overflowed, this is a private Dammage, for which an Action on the Case will lie.

| | | | |
|---------------------|---|---------------------|--|
| But they have Power | { | Over the Person, by | { Fine.
Amerciament.
Imprisonment. |
| | | Over the Goods, by | { Distress,
and
Sale. |
| | | Over the Lands, | { By charging them;
or,
By Sale. |

They may fine for ill Language, or for Contempt of the fine. Commissioners in Court, or for any Disturbance there; for contemning their Orders; for refusing to obey them; they may fine their Officers for neglecting their Duty; for refusing

sing to accept of an Office being chosen, or misdemeaning himself when in Office; for setting up Piles and Stakes in great Rivers, this being a *Purpresture*, which is in Nature of a *Nuisance* at Land, but then it must be presented to be done *vi & armis*.

They may fine the *Sheriff* if he doth not attend upon Notice, or if he neglect to return a Jury having a Warrant from them for that Purpose.

They may likewise fine a *Juror* for departing after his Appearance is recorded.

These Fines, and likewise *Amerciaments*, must be every Year estreated into the *Exchequer* by the Clerk of the Commissioners, or he forfeits $\frac{1}{2}l.$ for every Default. 13 *Elix. cap. 9.*

They cannot impose a Fine upon a Township, and levy it upon one Man, but it ought to be upon every Inhabitant in respect of his Estate. 2 *Cro.* 336.

Amerciaments.

These are usually set by the *Jury*, and are generally for Offences which consist in *non agenda*, and in this respect they differ from Fines, for those are imposed on Offenders for doing what they ought not.

Offences for which Persons are amerced, cannot be found to be by Force, because they arise by *Sufferance*, *Neglect* or *Nonfeasance*.

By suffering Walls or Banks to be in Decay, by neglecting to repair a Bridge, Causeway, or to cleanse a River, and the like, &c.

By casting Dirt, Sand, &c. in a River; 'tis true, this is an Act done, and therefore the Presentment must be, that it was done *vi & armis*, or that 'tis a *Purpresture*, and then the Offender may be amerced.

Amerciaments may likewise be set upon by the Presentments of Surveyors.

Imprisonment.

They cannot *Imprison* for disobeying their Orders, as they may for a *Contempt* in their Presence. *Sid.* 145.

Taxing; the Warrant thereof, and of Distress.

A Tax ought to be made according to the Quantity and Quality of Acres, and not according to the Number of Persons.

A Rate or Tax being imposed on a Person, and he refusing to pay it, the Commissioners may grant a Warrant to distress. 5 *Rep. Rook's Case.*

2 *Cro.* 336.
2 *Bullst.* 198.

They cannot tax a whole Township, but must set it upon particular Persons.

And in such Cases, the Goods of the Person upon whom 'tis imposed may be taken any where; but if it be upon a

Present-

Presentment *ad reparandum vel amovendum*, then the Distress must be taken within the Bounds of the Commission.

Where an *Assessment* is made upon particular Lands, a Stranger's Goods may be taken there, but not otherwise; but where Lands are not charged, but the Person only, as by *Fines, Amerciaments, &c.* then the Goods of the proper Person must be taken, and of no other.

These Goods may be sold, but not without a Warrant from the Commissioners; and so long as they remain in the Custody of the Officer who acts under the Commissioners, they cannot be replevied, because the Sheriff hath not so large an Authority as they have; but the Goods being sold, may be then replevied in the Queen's Courts alone.

Lands may be sold for Sesses, and Charges imposed by the Commissioners which lie in Payment.

where
Lands
may be
sold.

'Tis true, where a Man holds Lands by the Payment of a certain Sum towards the Repair of a Sewer; though this consists in Payment, yet upon his Neglect the Commissioners have no Power, until they first make an Order for the Payment, &c. because it ariseth by the Tenure of the Land, and not by Vertue of the Statute.

But if Lands are held generally *to repair, &c.* and the Sum certain is not known, though this is a Payment which ariseth likewise by Tenure, yet if the Commissioners impose a Sum, and the Person neglects to pay it, the Lands may be sold by their Decree.

But no Decree can be made for Sale of Lands, which are not within the Limits of the Commission; nor for a Copyhold, because that might be to the Prejudice of the Lord; nor for Non-payment of *Fines* and *Amerciaments*, because those are Mulcts or Punishments set upon particular Persons, and due to the Queen.

But now by the Act 7 *Anno*, any Six of the Commissioners may decree the Sale of Copyhold Lands, so as the Purchaser compound with the Lord of the Mannor for the Fine, and then the Lord shall at the next Court grant unto the Vendee such Copyhold Lands, &c. for such Estate as shall be decreed by the Commissioners to him, reserving the ancient Rent, and shall likewise admit him Tenant.

And Six of the said Commissioners may, by Warrant under their Hands and Seals, give Power to any Person to levy the Money by them taxed upon any Lands, chargeable with any Taxes by Vertue of their Commission; and this shall be done by Distress and Sale of the Goods of the Party that shall not pay, or refuse to pay the same, rendering the Overplus, and deducting reasonable Charges.

These

These *Decrees* must be certified into the *Chancery* to have the Queen's Assent, otherwise they are not binding; that being done, a *Decree* upon Tenant in Tail will bind his Heirs; it will likewise bind a *Feme-Covers* or Infants, but not a Prebend, Parson, Dean or Bishop, who are seised in their Politick Capacities, because they are restrained by particular * Statutes to make Alienations.

* 1 Eliz. 13.
14 Eliz.

Traverse.

Presentments in a Court of Sewers may be *traversed* and tried there, but not what the Commissioners do upon their View; so if they fine a Person for a Contempt, 'tis not traversable, because 'tis the Act of the Court; if the Party is aggrieved, he must bring a Bill in Equity.

Lands ex-
empted
from a
Tax.

Such which lie upon an Ascent, and can be in no Danger of an Inundation; so likewise where Persons are bound by Tenure, Custom or Prescription; other Lands are exempted. Tythes likewise shall not be charged.

Lands which by special Custom are charged to do other Repairs, but not in *non reparando* generally.

Letts.

If a *Wear* or *Mill*, &c. is built on a Navigable River, or an ancient *Wear* enhanced, the Commissioners may order the Owner to pull down the one, and abate the other; and if he continue them, or build them up again, he forfeits 100 Marks, per Stat. of 1 H. 4. 12 H. 4.

If a Stranger sets up *Piles* or *Stakes*, he is to be fined or amerced, and may be ordered to remove the Nuisance.

And if it cannot be found who committed it, the Commissioners may order those to abate it who are likely to receive most Damage.

Sewers where no Passage of *Boats* is used, nor where the Water doth not ebb and flow, are not under the Survey of the Commissioners by Vertue of this Statute, because their Commission extends only to *Walls*, *Ditches*, *Banks*, &c. by the Coast of the Sea, and Marsh Grounds, which are damaged by the Flowing and Ebbing thereof, or of Fresh Waters descending therein; and therefore a particular Law was made, Anno

* 3 Jac. 1.
cap. 14.

* 3 Jac. that the *Walls*, *Ditches*, &c. in or about London where no such Passage is used, and where the Water falls into the *Thames*, shall be subject to the said Commission.

Continu-
ance of
Commis-
sion:
13 Eliz.
cap. 9.

The first Commission by the Statute of 23 H. 8. was to continue no longer than *Five Years*; but now by a subsequent Law, viz. 13 Eliz. the Term is enlarged to *Ten Years*, unless it shall be repealed, or determined by a new Commission *Superseas*.

And notwithstanding such Determination by *Superfedeas*, yet the Laws and Orders, made by Vertue of such Commission before it is determined, shall continue in Force without any Return thereof made into the *Chancery*, and without the Royal Assent, until they shall be altered, repealed, or made void by the new Commissioners, or any Six of them.

But then these Orders must be written in Parchment indented, and under the Seals of the Commissioners, or Six of them, one Part whereof may remain with their Clerk, and the other Part where they shall appoint; which Laws shall then continue in Force for the Space of One Year next after the Expiration of Ten Years from the *Teste* of the Commission.

And in the same Statute 'tis enacted, That the Commissioners shall not be compelled to make a Return or Certificate of their Laws or Orders, nor be fined for that Cause.

But this must relate to Certificates and Returns made into the *Chancery*, and not into *B. R.* upon *Certiorari's* delivered, and therefore they have been fined for proceeding after the Delivery of such Writs. 1 *Mod.* 44. 1 *Vent.* 66.

And if there is no new Commission within that Time, then the Justices of Peace may execute these Laws for that Year; but there must be six of them (*Quorum unus*) and they must be Justices, &c. of the County where the said Laws were to be executed by Vertue of the Commission expired.

But a new Commission being once granted, though within the Year, the Authority of the Justices is then to cease.

It has been held, That these Commissioners, upon great Occasions, may make Orders for erecting *New Banks* and *Cuts*, as well as for repairing the *Old*, so as they compound with the Owners of the Soil.

But this is contrary to the Resolution in the Case of the *Isle of Ely*, where 'tis held that the Commission extends only to Reparation and new making *ancient Walls*, *Gutters*, &c. and not for cutting *new Rivers*; for a Tax for *new Inventions*, though profitable, must be raised by a voluntary Contribution.

Where one is bound by *Prescription*, or otherwise, to repair, he ought to do it, if the Danger is not inevitable; but if 'tis so by his Fault or Neglect, and he is not able to repair, every one who hath any *Damage* may have an Action against him.

But if the Danger is inevitable, by reason of the extraordinary Rage and Violence of the Waters; there, to prevent a publick Inconvenience, the Commissioners may tax all who are likely to have any Loss, though one is bound to repair.

Erecting
and re-
pairing
Sea-
Banks.

* 10 Rep.

10 Rep. *Kighley's Case*. *Stiles* 179.

M m

And

And they ought not in such Case to tax him or those only who have Lands next adjoining. 3 Rep. Roak's Case.

They may proceed by $\left\{ \begin{array}{l} \text{Jury.} \\ \text{View.} \\ \text{Discretion.} \end{array} \right.$

1. By Jury impannelled to enquire who hath set up any Impediments, who have neglected to repair, &c. who are bound by Custom or Prescription, Tenure or Covenant, and what Quantity of Lands, what Ground lies within the Reach of the Waters to which any Damage may be done.

And if the Jury find that such a Person ought to repair, tho' he remove it into B. R. they will not quash it, or grant a new Trial until 'tis repaired; and there, if upon a new Trial he is acquitted, he shall be reimbursed. *Sid. 78.*

Who, and
for what
Causes,
are bound
to repair.

2. By View, viz. By seeing the Fences, discoursing with Workmen what is necessary to be done, and how much it will cost.

By Frontage, viz. Those who having Grounds fronting the Sea, unless some other Person is bound to repair by Custom or Prescription.

By Ownership, viz. The Owner of a Bank or Wall: By Prescription, *ratione terre*; but Bodies Politick may be bound by Custom, without any Land. *Fitz. Abr. tit. Barr. plac. 103.*

By Tenure of the Land, viz. If it is given for that Purpose: By Covenant, but this doth not bind the Heir, unless he hath Assets by Descent from him who enter'd into the Covenant.

A Township may be taxed, and the Tax levied upon one Person; but then it ought to be on such a Person who is to bear some Part of the Charge, and not upon one wholly exempted.

The Person thus taxed may complain to the Commissioners, who may make an Order for a Contribution according to the Quantity and Quality of the Ground of such who are liable to contribute, and they may award Process to compel them to pay it.

But the best Way is, When they have agreed how much to set on a Township, then to send for some of the Inhabitants, and by their Assistance to make a Rate.

The Parson is not liable for his Tythes, unless by Custom; but for his Glebe he is, because he had it from a Lay-Donor; but if the Tythes are in the Hands of a Lay-man, then they are liable to be taxed, because *tunc decima transiunt in Catalla.*

- By Prescription; if such issue out of Lands which are chargeable to the Tax, then such Annuities are not liable to be charged.
- Those who have Common of Fishery, Turbary or Pasture in Great Fens or Marshes, are liable to be taxed; but those who have Common in *Agris seminatis*, after the Corn severed, are not.
- Copyhold, — Is chargeable, but the Commissioners cannot sell the Land for Non-payment.
- Fairs, — Are not to be charged for the Profits thereof.
- Ferries. — He who hath the Profit of a Ferry may be charged.
- Herbage. — He who hath *primam vesturam Terræ* may likewise be charged.
- Lessor, and Lessee. — The Lessor must be taxed for great Repairs, viz. For building a new Bank or Wall, or repairing both; but for small and annual Reparations, the Lessee only.
- Level. — If there is an apparent Danger, the whole Level may be taxed, tho' a single Man is bound to repair.
- Marker. — Not taxable for the Profits there.
- Mortgager, — Is to be taxed.
- Parks, — In the Level must be taxed.
- Patron. — Not liable for his Right of Presentation.
- Port. — To repair a Port, the whole County may be taxed.
- Tenant in tail — Is liable, but not he in Reversion or Remainder.
- Warrens, — In the Level are to be taxed.

I shall conclude this Title with an Explanation of several Terms relating to it, and shall only mention the Writ of *Cartierari*.

- Bay, — Is the same with a Creek.
- Is the utmost Border of dry Land made, *Ex solo & fundo quæ propriis naturis sunt eadem cum terra super qua edificatur*; the Property is to him whose Grounds are next, but the Use and Occupation to all: 'Tis therefore in that Respect like a Highway; if 'tis cut, the Owner of the Soil may have an Action of Trespass; if any one receives Damages by that Cut, he may have a special Action on the Case, or the Offender may be indicted.

M m a

Creeks,

Sewers.

- Creeks, — { Are Inlets of the Sea running into the main Land, having no safe Harbour, or legal Privilege.
- Coasts of the Sea, — { Are such Towns or Territories as lie next the Sea.
- Caufway, — { Is a Passage made of Earth, Gravel-stones, &c. by Art, on some Highway leading through Grounds surrounded with Water.
- Ditches, — { Are Currents of Water *in infimo gradu*, which have no apparent Current, nor any constant Standing.
- Goates, — { Are Engines built with Doors of Timber to let the Land-floods into the Sea.
- Gutter. — { This is less than a Sewer, being of a narrower Passage, and the Use of it is private.
- Haven, — { Is a safe Place of Habour for Ships, but hath no Privilege.
- Islands, — { These are *loci undique aquis circumdati*. England is a *Peninsula*, which with Scotland makes an Island.
Garnsey and Jersey are Islands, but not within the Realm of England, or governed by our Laws; the Queen hath them by Her Title to France.
The *Ile of Man* was formerly a little Kingdom, and had a King who was Viceroy to the King of England, and is a Member thereof to this Day.
The *Ile of Wight* was formerly Part of Hampshire, and severed from it by the Violence of the Sea.
- Pond, — { Is a standing Ditch cast by the Labour of Men in their private Grounds.
- Pool, — { Is a standing Water without any Current; 'tis private both in Property and Use, and therefore not within the Commission of Sewers.
- Port, — { Is a safe Harbour which hath legal Officers, and where Goods are usually laden or unladen.
- River, — { Is a running Stream pent in with Walls or Banks on either Side; and so far as the Sea doth flow and ebb 'tis a Royal Stream, and the Fishing belongs to the Crown, but the Subject may have it by Custom or Prescription; but where the Sea doth not ebb, the Owner of the Soil of each Side hath a Right of Fishing.

Sewer,

- Sewer, — { Is a Fresh-water Trench, or small Current, or little River compassed on both Sides with Banks.
- Stream, — { Is a Current of Water running over a Level, and not kept in with Banks or Walls.
- Wall, — { Is an artificial Work made of Materials brought thither at the Charge of the Party, and therefore belongeth to him his Grounds do not adjoin.

The Returns and Proceedings of Commissioners of Sewers are all in *English*.

Certiorari
and Re-
turn.

If they proceed after a *Certiorari* deliver'd, the Court of B. R. will grant an Attachment, and they may be fined and committed for a Contempt. 1 *Levins* 288.

The Return was, *quod presentatum fuit per Juratam*, without saying *duodecim*, and for this Reason not good. *March. Rep.* 123, 198.

A *Mandamus* was granted to the Commissioners, for that an *Archdeacon* was made *Expenditor*, he being to be exempted by Law, because 'tis a Secular Office, and inferior to his Degree. This was Dr. Lee's Case of *Rocheſter*, *Anno* 22 *Car.* 2.

Sheep, See *Pasture*.

Sheriff,

IS an Officer of great Antiquity and Authority amongst us, for I find him mentioned amongst the Laws of *Edward* the Elder and his Son *Athelſtane*, which is now above 770 Years since.

And as for his Authority, he had the Custody of the County in those Days for the Use of the King, where no *Comes* or *Aldermen* presided, those being synonymous Words amongst the *Saxons* and *Danes*.

This Officer is expressed in *Latin* by the Name of *Viccomes*; but Mr. *Seldon* tells us, the Particle *Vice* doth not signify any Subordination to the *Comes* or Alderman: But the Meaning of it is, that this Office was *supplere Vicem Comitum*, or *Aldermanni*, in such Counties where no Earl or Alderman governed.

But tho' before the Conquest, the Earl or Alderman was placed in most Counties, (for as *Bracton* observes, the Kingdom was composed of Earldoms and Baronies) yet these were Feudal or Honorary Dignities, and the County was still subject to the immediate Jurisdiction of the King, who had Sheriffs there for that Purpose.

M m 3

And

And these were Persons skilled in the Laws of the Land, for they were Judges of all Matters arising within the County; and no Man applied himself to a superior Court, but only in Cases where Justice was not done in the County.

And this appears by the ancient Form of the *Writ of Right*, by which the King commands the Lord to do Right to his Tenant, which if he doth not, then he commands the Sheriff to do it, *Ne amplius inde clamorem audiantus pro defectu recti.*

There were Two Courts in which Justice was then administered; one called the *Sciremote*, otherwise the *Felcmote*, and now the *Sheriff Tourn*:

The other called the *County Court*. Of both which Courts the Sheriff had a Jurisdiction.

For though in the *Saxons* Times the Bishop of the Diocese, and the Earl or Alderman, were by the Laws of King *Edgar*, who instituted the *Tourn*, commanded to be Twice a Year there present, to direct as well in Divine as in Secular Matters; yet that Command was not exclusive to the Sheriff, for the *Vicedomini*, *Præfecti*, *Præpositi*, &c. were likewise to be present in that Court.

Tourn.

The *Tourn* is a Court of Record, held before the Sheriff to hear and determine small Felonies and Nuisances; and out of this Court the *Leet* was derived, and granted to particular Lords of Manors. This Court is to be kept Twice in a Year, viz. *infra Menses Pasch. & Mich.*

The Power of Stewards in *Leets*, and of Sheriffs in the *Tourn*, is the same; but if the Sheriff will enquire into what is usually inquirable at the *Leet*, and which hath been found there, he cannot distrein for an Amerciament upon such a Presentment without being a Trespasser, but in the Lord's Default he may enquire, &c.

Formerly the Sheriff in this Court enquired of all Felonies at Common Law, but of none by Statute; but this was when it was one of the highest Courts which the King had: Now he cannot hold Plea of any Felony, or for any Debt or Trespass, for he is restrained by * *Magna Charta*.

* Cap. 17.

In those Days he took Indictments, *Virtute* } *Commissionis*;
or,
} *Officii.*

The Power which he had by *Commission* from the King, was taken away by the Statute of 18 Ed. 3. cap. 9. because they abused the Authority which they had, by committing Persons to extort Fines from them, and sometimes merely out of Malice.

But

But the Power which they had *Virtute Officii* continued till 4. 4. and they having abused that likewise, by impannelling Jurors without any Freehold to serve their Purposes, and by awarding Process upon Indictments, by assessing great Fines, and committing several Persons; all this Power was quite taken away by the Statute of 1 Ed. 4. cap. 2.

'Tis true, they might still take *Indictments* in this Court, but they could award no Process, for they must deliver such *Indictments* to the Justices of Peace at the next Sessions under the Penalty of 40 l. and the Justices by this Statute have Power to proceed as if such Indictments were taken before them.

If they do not return the *Indictments* to the next Sessions, they are all void; and if they arrest, fine or imprison without any Process from the Justices in their Sessions, they shall forfeit 100 l. one Moiety to the Queen, the other to the Party grieved.

But he may still commit for an Affray in his Presence sitting in the Court, or may bind them to the Peace, and commit them for want of Sureties, and may impose a Fine for any Contempt there, or Disturbance of the Court.

Suitors making Default may be amerced and distreined, so may Jurors departing without giving a Verdict.

At this Day, the Authority of the Sheriff in this Court is chiefly to preserve Order and good Government in the County, by Enquiry into Offences committed against the Peace, and of other Common Nuisances amongst the People.

And upon Presentments of *Nuisances*, the Offender cannot be amerced there, but such *Presentment* must be certified to the Justices as aforesaid.

But this Court, and the *Leet* also, are now almost disused; the Reason may be, because after the Wars between the Houses of York and Lancaster were ended, and the Nation wholly at Peace, Men had Leisure to invent new Crimes, which occasioned the making new Laws to transfer the Punishment of such Crimes to a superior Jurisdiction.

Constables were now to present such Offences to those Courts who had Cognizance thereof by these new Laws, and a new Set of Men were introduced unknown to former Ages, and these were called *Informers*, of which there could be no Occasion before, because there were *Leets* almost in every Parish constantly held Twice a Year, where the Juries of their own Knowledge, without any *Presentment* or *Information*, might take Notice of publick Nuisances, and of all Offences against the Peace.

The Stewards in these Days were very careful to give the Juries a particular Charge to be exact in their Enquiries, because Sheriffs in their *Tourn* were always Watchful and Inquisitive

quisitive of their Actions, and ready to take Advantage of their Neglects, for by this Means the *Leet* might be seized, and then the People were bound to come to the *Tourn*.

**County
Court.**

The *County Court* still continues. It was instituted by *Edmund the Saxon*, Sixty Years before the *Tourn*; but it is not a Court of Record as the *Tourn* and *Leet* are, because these were instituted for the publick Good, in order to preserve the Peace, and to punish Nuisances; but the other is of private Jurisdiction to determine Causes between the Parties, under the Value of 40 s.

Formerly this Court held Plea of Titles of Land in such Case, where the Lord of the Manor where the Land lay had not done Justice, and at this Day by a Commission from the Queen, which is called a *Justicies*, they may hold Plea in Personal Actions to any Value; and in some Cases, by this Writ they may hear and determine Real Actions.

Arrests.

| | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|-------------------------------|-----------|-----------|-----------|
| Fees thereof; { Sheriff ————— | 00 | 01 | 00 |
| { Bailiff ————— | 00 | 00 | 00 |
| { Gaoler ————— | 00 | 00 | 00 |
| { Bond for Appearance ——— | 00 | 00 | 00 |

If he takes more, he is to pay treble Damages to the Party grieved, and 40 *l.* to the Queen and Prosecutor, *per Statute* of 23 *H. 6. cap. 10.*

Hut. 70.

A Sheriff took 30 s. for a Warrant upon a *Capias ad Satisfaciend.* on a Judgment for 103 *l.* This is Extortion at Common Law, but not within this Statute, because it speaks of Fees to be taken upon the Arrest of the Party when bailed, and a Man cannot be bailed who is taken upon a *Ca' Sa'.*

Wizes.

He shall not send any Provisions to Judges, or Gratuity to his Officers; shall not have above Forty, or under Twenty Men in Liveries.

Forfeiture is 200 *l.* *per Stat. of 13 & 14 Car. 2. cap. 2.*

**Baili-
wick.**

Letting it to Farm, { The same Forfeiture as for Arrest: *per Stat. of 23 H. 6. cap. 10.*

**County.
Noy 102.**

He took Money of the Gaoler for his Place, and his Servant sold the Bailiwick, but the Sheriff took the Money; this was held to be within the Statute of 4 *H. 4. cap. of let- ting County to his Farm, and he was fined.*

For Execution, not } Must take no more than for } *l. s. d.*
 in Cities or Cor- } every Pound under 100 *l.* } 00 01 00
 porations, } If above 100 *l.* } ———— 00 00 06

Forfeiture is treble Damages to the Party grieved, and 40 *l.* to the Queen and Prosecutor, *per 29 Eliz. cap. 4.*

An Information was brought against the Sheriff of *Glow.* *Cro. Eliz.*
cester upon this Statute, for taking more than 12 *d.* in the 264.
 Pound for executing a Judgment out of the *Common Pleas*.
 The Defendant pleaded the Proviso in the Act, which is,
 That it shall not extend to Fees for Executions within Cities
 or Corporations : And upon Demurrer it was objected, That
 the Proviso related only to Executions on Judgments in
 their own Courts; but it was held, that it extended to
 Judgments in all Courts.

He must assist the Justices of the Peace :
 He must levy Fines estreated into the
Exchequer.

Forcible Entry. } He must impanel a Jury to enquire of the
 Force, upon a Precept to him directed
 from the Justice ; which if he refuse, he
 forfeits 20 *l.* between the Queen and
 Prosecutor, to be recovered by Indict-
 ment in Sessions.

If he return those who have not 40 *s.* *per Annum*, he may
 be indicted. 8 *H. 6. cap. 9.*

force. } Entering or detaining with Force, the Party
 grieved may have a Writ directed to the
 Sheriff upon the Statute of *Northampton*,
 by Vertue whereof, if he find the Force,
 he may make Proclamation, commanding
 the Offenders to be gone; if he refuse,
 he may seize their Arms, and commit
 their Persons, but he cannot make Re-
 stitution: This must be by Vertue of
 the Statute of 8 *H. 6.*

Gaols. —

He is chargeable with the Gaols and Prisoners, and must put in such Gaolers for whom he will answer; but the Gaolers who have the actual Possession shall be liable for wilful Escapes, if they have wherewith to satisfy; if he suffer a Felon to escape, he shall be hanged: This was done in the Case of a Gaoler in *Cambridge*, in the Reign of Queen *Elizabeth*.

Indictments. }

Indictments or Presentments taken in *Tourns* must be delivered at next Sessions to Justices of the Peace, or else Sheriff forfeits 40 *l.* per Stat. 1 Ed. 4. cap. 2.

Returning any Bailiff, Coroner, Steward, or Servant of theirs on a Jury, forfeits treble Damages to the Party, and 40 *l.* to the Queen and Prosecutor. 23 H. 6. cap. 10.

By the Statute he is to have for } *l.* *s.* *d.*
the Pannel ————— } 00 00 04

No Juror shall be returned without an Addition. 27 Eliz. cap. 7.

Tales-Men shall be returned out of some other Pannel to serve at the same Assizes.

Summons of Persons qualified to attend on Juries must be made Six Days before, by shewing the Warrant under Seal of the Office, or by a Note in Writing under the Hand of the Officer to be left at the Dwelling-House of the Jury-Man.

Juries. —

Summoning otherwise than as aforesaid, or neglecting his Duty, or excusing any one for Favour or Reward, or allowing an Exemption to any one under Seventy Years old, the Sheriff, Under-Sheriff, or Bailiff, forfeits 20 *l.* to the Party grieved, or to any one who will sue for it.

None shall be returned at Assizes or Sessions in the County of York but once in Four Years.

One Pannel of Forty eight Freeholders or Copyholders, each having 80 *l.* per Annum, shall be returned on the Grand-Jury.

Oath of Under Sheriff, }

Of Supremacy, and of his Office, may be taken by him before Two Justices of the Peace; if he act without taking the Oath, he forfeits 40 *l.* to the Queen and Prosecutor. 27 Eliz. cap. 12.

Pearce

Peace.

He is *Conservator* of the Peace through the whole County; he may command any Offender to find Surety of the Peace; he may *Ex Officio* take a Recognizance, and so he may by Vertue of his Commission, which is *Commisimus vobis custodiam Comitatus.*

Pleints shall not be enter'd in County-Courts but in the Name of the Party Plaintiff, either by himself or Attorney.

He must find Pledges which are known in the County to pursue his Pleint, and there must be but one Pleint for one Cause, under Penalty of 40 l.

The Defendant must be summoned by a Bailiff, under the Penalty of 40 s.

Pleints.

Any Justice upon Complaint may examine the Pleints and Officers, and if he find them guilty, shall within Three Months certifie the Examination into the *Exchequer*, upon which they shall be convicted to pay the aforesaid 40 s. without farther Enquiry.

Two Justices may view his *Estraits* before they issue out of the County-Court, and there must be Two Parts of them indented, and sealed by those Justices and Sheriff, one Part to remain with the Justices. If he refuse to *appear*, the Justices may make a Process directed to the Coroner to compel him, and this is a *Ven. Fac. 11 H. 7. cap. 15.*

Warrants.

Making Warrants without the Original Process, if the Offence is confessed or proved by sufficient Witnesses, the Judges shall commit the Offender, and not to be enlarged till he pay to the Party grieved all his Cost and Damages to be assessed by the Judge, and 10 l. more, and 20 l. to the Queen. 43 Eliz. cap. 6.

Sir Lewis Mordant was Sheriff of Bucks, his Father died 20 April, the Parliament then Sitting, so that he was a Peer, but his Office of Sheriff was not determined by his Peerage. Cro. Eliz. 12, 13.

An

An Indictment against a Sheriff, for dividing one Contract into several Pleints.

Middlesex ss. **J**ur', &c. quod cum R. O. de, &c. primo die Aprilis, Anno Regni, &c. mutuasset & accommodasset cuidam T. N. quatuor libras & decem solidos legalis monete Anglie solvend' eidem R. O. cum inde requisit' fuisset quodq; R. E. de H. in Com' præd' Armiger, nuper Vic' Com' prædict' vicesimo primo die Aprilis, Anno, &c. in Curia sua Com' præd' tent' apud L. in Com' præd' pro recuperatione debiti præd' eidem R. O. in eadem Curia (præd' R. E. adtunc Vic' Com' præd' existen') scienter fraudulenter & subdole intravit tres sepeales querelas versus præfas' T. N. quilibet querela præd' continet' triginta solid' & sic unum integrum contractum in diversas querelas divisit in deceptionem subditorum dicta Dom' Reg' & contra pacem, &c.

Silk Throwing.

EXercising that Trade, not being Apprentice to it for seven Years, forfeits 40 s. per Month to the Queen and Prosecutor.

Silk-Winder or Doubler, imbezelling Silk deliver'd to him, or the Buyer of such Silk, shall be punish'd by one Justice of Peace, by paying the Dammages and Charges, not exceeding what the Party grieved shall prove he is damnified or hath expended, and if not paid within 14 Days, shall be whip'd, or set in the Stocks. 13 & 14 Car. 2. cap. 15.

Snarers, See Dogs.

Soldiers.

Arms;
Caps, and
Clothes.
13 & 14
Will.

BUYING Arms of a Deserter, knowing him to be so, forfeits 5 l. to be levied by Warrant of two Justices, being convicted of this Offence at Sessions. 7 & 8 Will. cap. 23.

Carriages.

Officer of a Regiment marching, shewing the Queen's Order to a Justice of Peace, he shall issue out Orders to Constables.

stables to provide Carriages, the Officer paying to the Constable,

| | | | | | | |
|----------|---|----------------------------------|----|----|----|------------|
| Per Mile | { | For a Waggon and five Horses, | l. | s. | d. | |
| | | or for four Oxen and two Horses, | 00 | 00 | 08 | 13 & 14 W. |
| | | or six Oxen ————— | | | | |
| Per Mile | { | For a Cart and four Horses, | 00 | 00 | 06 | |
| | | (and so proportionably) ——— | | | | |

Officer making a Carriage travel more than one Day, or not discharging him in due Time, or suffering Soldiers (other than sick or wounded) or Women to ride —————

05 00 00

Or forcing Constable to provide Saddle-Horses; or forcing Horses from the Owners, forfeit for each Offence —————

The Proof must be upon Oath before two Justices, who are to certify it to the Paymaster-General; who shall pay it, and deduct it out of the Officers Pay. 4 & 5 W. & M.

Harbouring or concealing him knowingly, like Conviction and Punishment as for buying his Arms; but if found Not Guilty, shall recover treble Costs. 7 & 8 Will. cap. 23. 2 & 3 Anne.

Deserter.

Deserting beyond Sea, and coming into England before he is tried by a Court-Martial; and if the Regiment, Troop, or Company to which he belong'd shall continue in the Queen's Service beyond Sea, then upon Oath made to a Justice of Peace where the Offender shall be taken, such Justice, &c. shall cause him to be sent to the General Court-Martial in England, which Court may send him (if they think fit) to his Regiment, &c. beyond Sea.

2 & 3 Ann.

If any Soldier depart after he hath taken the Press-Money, or hath received his Pay, there lies a Writ to the Sheriff, *ad capiend. conductos proficiscend. in obsequium nostrum*, and this my Lord Coke calls *Lex Terra*.

Departing.

A Captain (for Advantage) licensing a Soldier to depart, forfeits Ten times the Value of the Thing taken; to be divided between the Queen and Prosecutor, and to be recovered before Justices in Sessions. 4 & 5 Phil. & Mar. cap. 3.

Going beyond Sea to serve Foreign Princes, not having before they go taken the Oath of Allegiance, is Felony. 3 Jac. cap. 4.

Felony.

If he is a Gentleman or Officer, and going to serve a Foreign Prince, not being bound with two Sureties not to be recon-

reconciled to the Pope, or to consent to any Conspiracy against the Queen, 'tis Felony. *Ibid.*

Taking Prefs-Money, and departing without Licence, 'tis Felony. 7 H. 7. cap. 1. 3 H. 8. cap. 5. 5 Eliz. cap. 5.

Coming from beyond Sea, and wandering idly without a Testimonial from a Justice of Peace (near the Place where he landed), expressing the Place and Time of their Landing, and whither they are to pass, and a Time limited for passing, or if they exceed that Time, 'tis Felony. 39 Eliz. cap. 17.

Forging or Counterfeiting such Testimonial is Felony.

Game.

*Poultry or
Fish, per
13 & 14 W.

Destroying Game * without Leave of the Lord of the Manor under his Hand and Seal, and being convicted on Oath before a Justice of Peace, if an Officer, he forfeits 5 l. if a common Soldier, then his Officer is to pay for him 10 s. Both of these Sums are to be distributed to the Poor of the Parish.

Stat. 13 &
14 Will.

If such Officer after Conviction, and upon Demand, refuse or neglect to pay it within two Days, he forfeits his Commission.

Inn-keepers and
Aldermen.

Officer taking Money of them for excusing quartering of Soldiers, upon Oath made before a Justice of Peace within five Days afterwards, may be compelled to come before a Justice upon his Warrant, and there to enter into a Recognizance of 40 l. Penalty, to appear at the Queen's-Bench at a Time prefixed by the Justice, to answer an Action; and if the Plaintiff hath a Verdict, he shall recover Damages, and the Officer be cashiered, and shall likewise pay double Costs; and so shall the Plaintiff if he be nonsuited, or discontinues the Action. 6 & 7 W. per 13 & 14 Will. is to be cashiered.

| | l. | s. | d. |
|--|----|----|----|
| Must have no more of a Commission-Officer of Horse, under the Degree of a Captain, for | 00 | 02 | 00 |
| Diet, Small-Beer, Hay and Straw <i>per Diem</i> than | | | |
| For such Commission-Officer of Dragoons | 00 | 01 | 06 |
| For a Commission-Officer of Foot | 00 | 01 | 00 |
| And if he has a Horse, then for that Horse | 00 | 00 | 06 |
| Light-Horseman, Diet, Small-Beer, Hay and | 00 | 01 | 00 |
| Straw <i>per Diem</i> | | | |
| Dragoon | 00 | 00 | 09 |
| Foot-Soldier, Diet and Small-Beer <i>per Diem</i> | 00 | 00 | 04 |

Officer refusing to pay the same upon an Account produced, and Oath made by two Witnesses at next Sessions, the Justices may certifie to the Paymaster of the Queen's Forces the Sum due, who shall pay the same out of the Arrears of

of the Offender, or lose his Place; and if no Arrears are due, then he shall deduct it out of the next that shall be due, and the Officer shall be cashiered. 4 & 5 W. & M.

If Inn-keeper, &c. will tender or give a Horseman 6 *d.* per Diem for his Subsistence in Meat, and for every Dragoon or Foot-Soldier 4 *d.* besides Candle and Use of Fire, he shall not be obliged to find him Meat. 8 & 9 W.

A Soldier listed must be brought before a Justice of Peace, not being an Officer of the Army, and shall declare his Consent to be listed, or the Officer must forfeit as for making false Muster. 5 & 6 W. & M. cap. 9.

Listed in one Regiment, and listing himself in another, without producing a Certificate in Writing from the Officer, shall suffer Death, or such other Punishment as a Court-Martial shall inflict. 13 & 14 Will.

Absenting himself without lawful Cause, shall be committed for ten Days without Bail, or pay 4 *l.* to the Queen. 4 & 5 Phil. & Mar. cap. 3.

Any Person making or giving a false Certificate to excuse a Soldier to be absent at a Muster, forfeits 50 *l.* and to be cashiered. 13 & 14 Will.

Officer making a false Muster, and any Person signing a false Muster-Roll, or a Duplicate, shall be cashiered, and forfeits 100 *l.*

Proof must be by two Witnesses on Oath before a Court-Martial, and the Forfeiture is to be paid out of the Arrears of his Pay to the Informer. 13 & 14 Will.

Next Justice may commit to the House of Correction Persons falsely mustering, or offering so to be, there to remain for ten Days, and shall have his Ear cut off by the Gaoler.

Lending a Horse to be mustered, forfeits the Horse, if his own; if not, then 20 *l.* upon Oath of two Witnesses before the next Justice; the Forfeitures to be paid out of his Pay or Goods, by a Court-Martial. 4 & 5 W. & M. Per 13 & 14, Proof as before.

Must give Notice to the Mayor, or chief Officer or Magistrate of the Place where the Soldiers to be mustered are quartered, and they are to be present at such Muster; Commissary neglecting, forfeits 50 *l.* and no Muster-Roll shall be allowed, unless signed by such Mayor or Magistrate. 13 & 14 Will.

Listing
for Land-
Service.

Muster.

13, 14 Will.
1 Ann.
3 & 4 Ann.

Muster-
master.
2 & 3 Ann.

The

The Commanding Officer, at the Time of the Muster, must sign and bring in a Certificate of

The Names of } Sick,
the Persons } Absent on Furlows,
Dead, and Deserted,
Days of Death, and Desertion, } Since last Muster.

Such Certificate proving false, the Officer is to suffer such Penalties which are appointed for false Musters.

Conviction must be before a Court-Martial as aforesaid. 13 & 14 Will.

Officer mustering one who is Servant to another Officer, or receiving Wages from him, or mustering any Person by a wrong Name, is to suffer like Penalties. 13 & 14 Will.

Mutiny.

Every Person mustered and in Pay, who shall excite, cause or join in a Mutiny, shall suffer Death, or such other Punishment as a Court-Martial shall inflict. 13 & 14 Will.

2 & 3 Ann.
3 & 4 Ann.

If he raise a Mutiny out of *England*, either on the Land or Sea.

*Trial by a
Middlesex
Jury, or
Special
Commis-
sion.

Refusing to obey his Superior Officer.

Resisting any Officer in Execution of his Office.

Striking his Superior Officer.

Drawing, or offering to draw or lift up, any Weapon against him, * Felony.

Pay.

Detaining Pay of Soldiers above ten Days, shall give him treble as much: Justices in Sessions may determine this Offence, and commit till Payment of the Forfeiture. 4 & 5 Phil. & Mar. cap. 3.

Pay.

3 & 4 Ann.

Paymaster detaining Pay from Officer or Soldier for a Month, or an Officer refusing to pay a Common Soldier when 'tis due, and having received it.

13 & 14 W.

| | | | | | |
|--|---|-------------------------------|---|----------|----------|
| Of the Two
Regiments
of Foot-
Guards. | { | To a Corporal of Light-Horse, | { | per Week | 00 17 06 |
| | | To a Trumpeter and Trooper, | | | 00 14 00 |
| | | To a Dragoon, | | | 00 08 00 |
| | | To a Serjeant, | | | 00 07 00 |
| | | To a Corporal and Drummer, | | | 00 05 00 |
| | | To a Foot-Soldier, | | | 00 04 00 |

| | | | | | |
|--------------|---|----------------------------|---|----------|----------|
| In the Army. | { | To a Serjeant, | { | per Week | 00 06 00 |
| | | To a Corporal and Drummer, | | | 00 04 00 |
| | | To a Foot-Soldier, | | | 00 03 00 |

Ans

And 6*d.* more to each Foot-Soldier at every Two Months End, upon Proof to a Court-Martial, forfeits 100*l.* to the Informer, and to be cashiered. 4 & 5 *W. & M.* 13 & 14 *W. & 2 & 3 Ann.*

Paymaster shall receive no Fees, nor deduct more than usual for Clothes, besides One Shilling per Pound to be disposed as the Queen shall think fit, and one Days Pay in the Year to the Use of *Chelsea-College.*

None shall be quartered upon Persons without their Consent. 31 *Car. 2. cap. 1.*

One or more Justices of the Peace, upon Complaint, may regulate Quarters. 8 & 9 *W. 3. cap. 13.*

Magistrates may quarter Soldiers in Inns, Livery-Stables, Ale-houses, Victualling-houses, and in Shops selling Brandy, Strong-Waters, Cyder or Metheglin by Retail, to be drank in the House, and not in private Houses. 13 & 14 *Will.*

Quartering otherwise, or threatening Civil Officers to deter them from their Duty, may be convicted upon Oath of Two Witnesses before Two Justices, who shall certify the Conviction to the Judge-Advocate, and he must certify it to the next Court-Martial, and then the Officer shall be *ipso facto* cashiered. 4 & 5 *Will. & Mar. cap. 13.* 13 & 14 *Will.*

Justices in Sessions shall appoint what such Soldiers are to pay. *Idem.*

An Officer quartering Wives, Children or Servants, without the Owner's Consent; if a Military Officer, he shall be cashiered, upon Proof made to the Judge-Advocate; if a Civil Officer, he shall forfeit 20*s.* to the Party grieved, upon Proof made to the next Justice of Peace, to be levied by Distress and Sale. 4 & 5 *W. & M.* 13 & 13 *Will.*

Money due to Inn-keepers for Quarters, shall be paid by the Paymaster, upon a Certificate from the Justices, out of the full Subsistence-Money. 6 & 7 *W. cap. 8.*

Officer, when he receives the Pay of a Regiment, Troop or Company, must within Four Days give publick Notice to Inn-keepers, &c. and to appoint them to come to their Quarters, and before they distribute any Money to the Soldiers, must pay their Quarters.

Not giving such Notice, or not paying upon producing the Account by the Inn-keeper, &c. shall be cashiered. 13 & 14 *Will.*

Conviction must be at Quarter-Sessions, upon Oath of Two Witnesses, who must certify to the Paymaster what is due, and the Paymaster not paying, forfeits his Place.

13 & 14 *W. & 2 & 3 Ann.*

Quartering.

13 & 14 *W.*

2, 3 Annæ.
3, 4 Annæ.

* But they
must not
have any
Vote for
electing a
Parlia-
ment-man.

† If he lifts
himself vo-
luntarily,
'tis 40 s.

The better to recruit the Forces during the Wars, a Law was made, That Three Justices, not having any Military Office, may send Warrants to Constables, to bring before them such able-bodied Men which are in their Divisions, and who have no lawful Calling or Employment, or visible Means for their Maintenance and Livelihood.

The Three Justices shall cause the Persons so brought before them to be delivered to some of the Queen's Officers appointed to raise and receive Men in that County, and the Officer out of the Levy-Money must pay to every Man † 20 s. and to the Constable who brought them 10 s. apiece for each Man.

Then the Articles of War against Mutiny and Desertion must be read in the Presence of the Justices.

And the Three Justices must make a Certificate under their Hands and Seals, that the Articles of War, as aforesaid, were read in their Presence, and of the Names of the Persons raised, to be delivered over to the Officer; and upon Tender, or Refusal, or Payment of the 20 s. the Articles of War being read, such Person shall be a listed Soldier, and shall, in case of Desertion, be punished as a Deserter.

The Three Justices must at the next Sessions exhibit an Account, under their Hands and Seals,

1. Of the Names of the Persons by them listed.
2. The Names of the Parishes from whence they came.
3. And of the Parish-Officers who brought them.
4. The Time when they were brought and listed.
5. The Names of the Officers to whom delivered.
6. And of the Regiment and Company to which he belongs.

This is to be kept by the Clerk of the Peace, that all Persons may have Access to it without Fee or Charge.

Trades.

Officers or Soldiers who served *William III.* and who were disbanded at the End of the War, may exercise Trades, tho' they did not serve an Apprentiship, and may set up such Trades as they are apt and able to occupy, in any Town or Place in the County where born.

And if indicted, then producing a Certificate under the Hand and Seal of some Field-Officer, or Commission-Officer of the Regiment where he served, or from some General of the Army, and proved by the Oath of One Witness to be true, or by Two Witnesses of his Service of the King, such Person may plead the General Issue; and if he have a Verdict, or the Plaintiff be nonsuited, he shall pay treble Costs.

Producing a false Certificate, shall be committed for Three Months, and lose the Benefit of the Act, 10 & 11 W. 3. cap. 11.

If a Soldier come from beyond-Sea to the Place of his Birth, and cannot get Work, Two Justices shall take Order to set him to Work, or for Want thereof shall tax the Hundred for his Relief. 6 & 7 W.

Work.

An Abridgment of the Militia Acts, viz. 13 & 14 Car. 2. Trained-Bands.
cap. 6. & 15 Car. 2. cap. 4. Alphabetically.

Ability of the Person.

The Lieutenants or their Deputies may examine on Oath the Ability of the Persons to be charged, but not themselves.

Appearing.

If a Soldier neglects to appear, Two Deputies may commit him for Five Days, or fine him; if a Horse-man, 20 s. if a Foot-man, 10 s. But if 'tis the Person himself who is charged, then Three Deputies may fine him 5 l. to be levied by Distress and Sale, &c.

Carts.

Deputy-Lieutenants or their Officers may charge Carts for carrying Powder and other Materials at 6 d. per Mile; and for a Horse employed out of the Cart, they must give 1 d. per Mile.

City and County.

Officers and Soldiers of such a Place shall not be compelled to appear out of their respective Liberties to exercise.

Constable.

Shall be aiding and assisting in Execution of the Statute, 13 Car. 2.

Covenants,

If the Party charged neglects or refuses to provide Foot-Soldiers, the Lieutenant or his Deputies may appoint Constables to provide 'em.

Between Landlord and Tenant, shall not be avoided by the Act.

He who is charged to find a Foot-Soldier, must have in Possession per Ann. ———

| | | |
|----|----|----|
| l. | s. | d. |
| 50 | 00 | 00 |

Or Personal Estate, other than Stock or Ground, and so proportionably, ———

| | | |
|-----|----|----|
| 600 | 00 | 00 |
|-----|----|----|

He shall have per Diem 1 s. or else his Master shall forfeit to him 2 s. to be demanded within 6 Weeks after Default, or before next Muster.

| | | |
|----|----|----|
| 00 | 01 | 00 |
|----|----|----|

None who hath an Estate of 200 l. per Ann. or Personal Estate of 2400 l. shall be charged to the Foot; but he who hath 100 l. per Ann. or under 200 l. per Ann. or is worth 1200 l. in Personal Estate, and under 2400 l. may be charged either with Foot or Horse.

N n 2

Horse,

| | | <i>l.</i> | <i>s.</i> | <i>d.</i> |
|---|---|-----------|-----------|-----------|
| Horse, and
who shall be
chargeable. | Lieutenants or Three Deputies may charge any; if with Horse and Arms, the Person must have in Possession <i>per Ann.</i> ———— | 500 | 00 | 00 |
| | Or in Goods or Money, besides the Furniture of his House (so proportionably) | 6000 | 00 | 00 |
| Horse. | None shall contribute to finding a Horse who hath not in Possession a real Estate <i>per Ann.</i> of ———— | 100 | 00 | 00 |
| | And Personal Estate in Possession worth ———— | 1200 | 00 | 00 |
| | Not sending out Horse, &c. not paying the Money towards the Provision of Man and Horse, Lieutenant or Three Deputies may fine him, not exceeding 20 <i>l.</i> to be levied by Warrant under their Hands and Seals, and employed for the same Uses. | | | |
| | Horseman shall have to maintain himself and Horse <i>per Diem</i> ———— | 00 | 02 | 00 |
| | Must bring Powder and Bullet, of each a Quarter of a Pound. | | | |
| | His Arms shall be Back, Breast and Pot, the Two last Pistol-Proof; a Sword, and a Case of Pistols 14 Inches in the Barrel; a great Saddle with Burrs and Straps; a Bit-bridle, Pectoral and Crupper. | | | |
| Imprisonment. | Lieutenant or his Deputy may commit Mutineers, and those who do not their Duties at Musters; the Commitment not exceeding 20 Days, and fine them, not exceeding 5 <i>s.</i> | | | |
| Imbezelling. | Two or more Deputies may commit him who imbezelleth Horses, Furniture or Arms, till he make Satisfaction. | | | |
| Use of Wight. | No Alteration made as to the Militia there. | | | |
| Lieutenants. | Commission of Lieutenancy may be issued out by the Queen, and their Lieutenants may call Persons together, and arm and form them into Companies, and conduct them to Places to suppress Rebellions, or resist Invasions, as the Queen shall direct. | | | |

Lieutenants. They may give Commissions to Colonels, Majors and Captains, and other Commission-Officers, and present the Names of Deputies to the Queen; who approving them, the Lieutenant shall give a Deputation. They may hear Complaints, examine Witnesses on Oath, and give Redress.

London Militia Lieutenants shall continue to list and levy the London Militia and Auxiliaries as formerly.

Month's Pay. Upon Invasions or Rebellions, the Person charged shall provide a Months Pay, &c. which shall be repaid out of the publick Revenue, and the Officers shall likewise be paid out of that Revenue for the Time they were in actual Service, and no Person shall be obliged to provide another Month's Pay until the first is discharged.

Shall be but once a Year, and not to stay above Four Days, without special Direction from the Queen or Her Council.

Muste, and Muste-Ma-ster He must live in the Country, and once a Year every Horseman is to pay him 1 s. and every Footman 6 d. by the Direction of Three Deputy-Lieutenants; and in Default of Payment, it may be levied on the Goods of the Person charged, unless Default be found in the Soldier.

Musqueteer Shall bring Powder and Bullet, half a Pound of each, and a Musquet Three Foot in the Barrel, the Bore to bear a Bullet of Twelve to the Pound, but if Fourteen, it shall be allowed; a Collar of Bandaleers, and a Sword; if with Match-Lock, he must have Three Yards of Match.

Notice to the Person If the Person doth not live in the Country where he is charged, Three Deputies shall give Notice to his Servant or chief Tenant, who are to convey it to the Landlord, and to bring his Answer; then if he neglect to provide a Soldier, his Tenant shall do it; and if he refuse, then Two Deputies may grant a Warrant to levy the Penalties; which see before in *Appearing*.

N n

Oath,

Lieut

Soldiers.

Oaths. — Peers must take the Oath of Allegiance and Supremacy before 6 Lords of the Privy-Council, or before others authorized by the Queen; one Justice of Peace may administer it to a Lieutenant, not being a Peer; Lieutenants may administer it to Deputies, not being Peers; and they to their Officers and Soldiers.

Officers of Foot — Shall find no Soldiers or Arms in respect of their Estates.

Pike-men — Must bring Pikes made with Ash, not under 15 Foot long; they must likewise have Back, Breast, Head-piece and Sword.

Purbeck. — The Militia thereof shall remain separate from the County of *Dorset*.

Peers, how to be charged. — By a Commission from the Queen under the Great Seal, directed to Twelve Peers, of whom Five shall assist the Peer according to the Proportion in the Statute, (except only the Monthly Taxes) and they shall put the Authorities in the Act in Execution, (excepting Imprisonment) the Charge and Penalties shall be certified to the Lieutenants; and then, if any Default shall be made, &c. Three of them may cause Distress to be taken and sold, if no Satisfaction be given within a Week.

Search. — Two Deputies by Warrant may employ Persons (of which a Commissioned and a Parish-Officer shall be Two) to search for and seize Arms of those who they shall think are dangerous: This Search must be after Sun-rising, except in Cities, Suburbs, Corporations, and Markets-Towns, and within the Weekly Bills.

Serving in Person. — None shall be compelled to serve in Person. Those who are provided by others, must be approved by the Captain, and may be altered upon an Appeal to the Lieutenants or Two Deputies; Persons so found and approved, must act under the same Penalties as in the Act, (which see in *appearance*.)

The Persons thus approved, must give in their Names and Places of Abode at the next Muster to Two Deputies, or to such who they shall appoint, that they may be listed; and if they afterwards desert, they shall forfeit 20 l. Neither shall they be discharged with-

- without Leave of two Deputy-Lieutenants or the Captain, on the like Penalry, to be levied by Distress, and if no Distress, then to be committed, not exceeding Three Months.
- Trained Soldiers.** { This must not be above four Times in a Year without special Direction from the Queen and Council, and must not be continued to Exercise above two Days at a Time.
- Tenants.** { Shall deduct the Money out of the next Rent, unless the Landlord, within two Months after such levying make it appear, that the Fault was in the Tenant.
- Tinners in Cornwall.** { Lord-Warden of the Stanneries, and such as he shall authorize, shall assess and muster the Tinners.
- Tower.** { Constable and Lieutenant of the Tower may continue to levy the Trained-Band, as formerly.

A Summons for a Muster.

To the Constable and Headborough of, &c.

Suff. ff. **BY** Command from the Rt. Hon. C. Earl of D. Lord-Lieutenant of the said County, I require you to summon all the Persons written in a List, and hereunto annexed, to appear compleatly armed at L. in the said County, upon *Wednesday* the 17th of *March* Instant, at Eleven of the Clock in the Forenoon, and each of them is to bring Pay for Two Days, and the Sallary for the Muster-master; every Musqueteer is to bring half a Pound of Powder, and as much of Bullets, and Three Yards of Match; and you are likewise required to be then and there present, to give an Account what you have done in the Premisses. Given under our Hands and Seals this Seventh Day of *March*, 1703.

A Summons for a Foot-Company.

To the Constable of the Hundred of, &c.

Suff. ff. **W**Hereas the Persons whose Names are contained in a List hereunto annexed, are charged to find Four Foot-Arms, according to the Statutes in that Case made and provided. These are therefore to require you to give Notice to the said Persons, That they provide and appear with the said Arms, and an able Man to bear them at L. in the said County, upon *Wednesday* the 17th Day of *March* ensuing, by Ten of the Clock in the Forenoon: And hereof sail not. Given under our Hands, &c.

The Summons under-written, the Constable must give to the Person who is to provide a Horse.

To Mr. R. B.

Suffex ss. **B**Y Vertue of a Warrant of J. A. Esq; to me directed, This is to summon you to appear at, &c. on Thursday, &c. between Nine and Ten of the Clock in the Morning, with a Horse well fitted, and that you bring a Back, Breast and Pot with you, pursuant to the Statutes in that Case made and provided; and you are likewise to bring with you Powder and Buller, a quarter of a Pound of each, and the Muster-master's Salary.

Dated, 18 Martii,
1703.

J. H. Constable.

Indictment against a Soldier for deserting, &c.

5 & 6 W.
& M.

Middlesex ss. **JUR'**, &c. quod R. R. nuper de L. in Com' præd' Yeoman, decimo septimo die Martii, Anno Regni, &c. legitime conduct' & retent' fuit in servitio dictæ Domine Regina per solutionem duorum solidorum secundum formam Statut. in hujusmodi casu edit. & provis. ad serviend. dictam Regiam super terram versus inimicos dictæ Dom. Reg. sub conductione cujusdam W. R. Ducis & Capitani sui & quod præfat. R. R. tricesimo die Martii Anno supradicto apud H. in Com' præd' a Duce & Capitan suo prædicto sine ejus licentia voluntarie & se'once recessit & seipsum retraxit a servitio præd' Dom' Reg' in malum & perniciosum exemplum aliorum in hujusmodi casu delinquen. & contra formam Statut. præd. necnon contra pacem dictæ Domine Reginae Coron. & Dignitatem suas.

Squibs.

9 & 10 W.

THE People having got a foolish Custom of throwing Squibs during the Time of any Publick Solemnity, and some having lost their Eyes thereby, and other Damages being done, a Law was made, prohibiting the making, selling, or offering or exposing to Sale, any Squibs, &c. or Fire-works, or any Cases, Moulds, or Implements for making Squibs, &c. and prohibiting Persons to suffer any Squibs, &c. to be cast out of their Houses, or out of or from any Part thereof,

thereof, into any publick Street; and likewise that no Person shall throw or fire any Squib, &c. in or into such Street or House.

The Offence is declared to be a Common Nuisance, and the Maker of the Squibs or Moulds, or Seller, &c. is to forfeit 5 *l*.

But he must be first convicted thereof before One Justice, either by the Confession of the Party, or Oath of Two Witnesses.

He that permits Squibs to be thrown out of his House, forfeits 20 *s*. for every Offence, but is to be convicted as aforesaid.

These Forfeiture are to be levied by Warrant from the Justice before whom the Party was convicted, by Distress and Sale of Goods, one Moiety to the Poor of the Parish where the Offence was committed, the other to him who prosecutes to Conviction.

He that throws or assists in throwing or firing Squibs, &c. into any publick Street, forfeits 20 *s*. to the Uses aforesaid: The Conviction is to be as above-mentioned; and if he doth not pay it immediately upon the Conviction to the Justice of Peace, &c. he may by Warrant commit the Offender to the House of Correction, there to be kept to Work without Bail for any Time not exceeding a Month, unless he shall sooner pay the Forfeiture to the said Justice.

But Commissioners of the Ordnance, or any Person authorized by them, may order Fireworks to be used and fired, &c. and so may the Artillery Company in London, and the Militia of England, in the Exercise and Practice of Arms only.

If any Person is sued for putting the Act in Execution, and the Plaintiff is cast, the Defendant shall recover Treble Costs.

Striking in Westminster-Hall, See Sessions.

Suspicion.

Common's law & fama, that such a Person did the Offence, is sufficient Cause of Suspicion; but then the Fact must be actually done, otherwise not.

In many Cases evident Proofs are not to be had, and therefore probable Presumptions are good Causes of Suspicion, and sufficient for a Justice to commit the Person suspected.

Pre-

Presumptions are thus divided by my Lord Coke :

1. *Violenta*, which he tells us is *Plena probatio*.
2. *Probabilis*, which moveth a little.
3. *Levis*, which is of no Force.

Some Presumptions of the first Sort are so violent, that no Proof can be admitted to contradict them ; as if a Man is taken with a bloody Knife upon a murdered Person, or flying from the dead Man ; though no Body saw the Stroke actually given, yet there needs no further Proof.

When a Felony is committed, any Man may arrest suspicious Persons, and carry them before a Justice of Peace, who may commit them, or take a Recognizance to appear at the Assizes or Sessions.

Swearing.

BY the Statute of 21 Jac. cap. 20. the Punishment of one prophanely Swearing or Cursing, was One Shilling to the Use of the Poor.

The Prosecution was to be within Twenty Days after the Offence.

The Conviction by the Oath of Two Witnesses, before One Justice ; and this Penalty was to be levied by Warrant and Distress, &c. and if that was not to be had, then the Offender, being above 12 Years old, was to be put in the Stocks for Three Hours ; and if under that Age, then he was to be whipp'd by the Constable, who was to have a Warrant from a Justice for that Purpose, or by the Parent or Master, in the Presence of the Constable, if the Penalty was not paid.

But some Alteration was made of this Law by that of 6 & 7 W. for by this Law the Forfeitures of One Shilling is confined to Day-Labourers, Common Soldiers and Seamen ; but every other Person is to pay Two Shilling for each Oath or Curse.

And for the second Offence, double the Forfeiture ; and for the third Offence, three Times as much as the first ; and in Default of Distress, if the Offender be above Sixteen Years of Age, he shall be set in the Stocks for One Hour for a single Offence, and for more than One, (if convicted at the same Time) then Two Hours.

Swearing.

555

If under Sixteen, and do not pay the Penalty, he shall be whipp'd by the Constable, by a Warrant from the Justice, or by the Parent, Guardian or Master, in Presence of the Constable.

The Prosecution must be within Ten Days after the Offence.

And the Conviction before one Justice by the Oath of One Witness.

The Justice who omits his Duty forfeits 5 l. a Moiety to the Informer, &c.

This Act is to be read by Parsons in the Church the next Sunday after every Quarter-Day yearly, or he forfeits Twenty Shillings.

Justices must keep a Book wherein they must register these Convictions, and certify them to the Quarter-Sessions.

A Warrant to levy the Money for prophane Swearing.

To the Constable, &c.

Suffer J. **W**Hereas it was this present Day duly proved before me, That J. S. of, &c. did, on Friday the 19th Day of this Instant March, being then above sixteen Years of Age, prophanely offend, by swearing Four Oaths in the Parish of H. in the said County, by reason whereof he hath forfeited to the Use of the Poor of the said Parish 2 s. for every Time he did so offend: These are therefore to require you forthwith to levy the said Forfeiture, being in the whole 8 s. upon the Goods and Chattels of the said J. S. by Distress and Sale thereof; and that you pay the same, when levied, to the Church-wardens or Overseers of the Poor of the said Parish of H. where the foresaid Offence was committed, for the Use of the Poor of the said Parish: And if no Distress can be taken as aforesaid, and in case the said J. S. shall not pay the said Forfeiture, or give Security for the same, that then you do set him in the Stocks, there to remain by the Space of Two Hours. Given, &c.

6 & 7 Will.
One Justice, One
Witness.
Ten Days.

Caration.

Taxation.

Under this Head, these Rules are to be observed :

1. 'Tis not the Quantity, but the yearly Value of Land that must be observed.
2. If a Man useth Lands in several Parishes, he shall be charged in every Parish proportionably to the yearly Value of the Land in each Parish.
3. The Farmer, and not the Landlord, must be charged; neither ought he to be rated for the Rent reserved.

A Man may be rated as well for Goods as Lands, but not for both.

The Charge must be on the Person, and in the Place where the Goods are at the Time of the Assessment.

Charges.

THE Justices of Peace in Berks, Bucks, Gloucester, Oxford and Wiltshire, shall be Commissioners in their respective Counties for putting in Execution the Act of 6 & 7 W. cap. 16.

They or Five of them may make Orders at their Quarter-Sessions, to settle the Rates and Prices which the Owners of Barges, Boats, and Vessels, must take.

And which the Tenants of Locks, Weirs, Bucks, Winches, Turn pikes, Damms, or other Engines, ought to take.

The Rates for Carriage in such Boats must be assessed in their Quarter-Sessions after Easter yearly: They must give Notice thereof in Writing to every Mayor or Head-Officer in every Market-Town, &c.

Owner of a Barge, &c. taking above the said Rates for Water-Carriage, or any Person breaking the Rules or Orders made by the Justices, forfeits for every Offence to the Party grieved 5*l*.

And must pay double Costs of Suits: This Forfeiture is to be recovered in any Court of Record at Westminster.

Such Rules and Orders (except for Water-Carriage) must be written in Parchment, and signed by Five Commissioners, and then are to continue in Force for Seven Years, and from thence till some new Rules are made.

But if any Person is aggrieved by any such Rules, upon Complaint to the Judge of Assize within One Year, he may confirm, vacate, or alter the same.

Barge-Master shall be answerable for Damages done by his Barge or Men.

Thetboot, See Disposition of felony.

Threatning,

TO hurt another in his Body, by Beating, Wounding, &c. the Party grieved may desire Surety of the Peace.

It has been doubted, whether such Surety ought to be where a Person threatens to burn a House or Goods; but I can see no Reason for this Doubt.

Tiles.

Earth for Tiles shall be cast up before the First of November, and must be stirred and turned before the First of February, and not made into Tile before the First of March, or lose double the Value to the Buyer.

17 E. 4. c. 4.

A plain Tile offered to Sale is to be Ten Inches and One Half long, and Six Inches and a Quarter in Breadth, and Three Quarters of an Inch thick.

Roof-Tile must be Thirteen Inches in Length, Three Quarters of an Inch thick, and of convenient Deepness.

Gutter and Corner-Tile must be Ten Inches and an half long, and of convenient Thickness, Breadth and Deepness.

Tile otherwise made, forfeits double Value to the Buyer, to be recovered by Action of Debt, &c.

But the Defaults shall be heard and determined by the Justices, and the Offenders fined after the Rate of 3 s. per Thousand of plain Tile, 6 s. 8 d. per Hundred for Roof-Tile, and 2 s. per Hundred for Corner or Gutter-Tile.

Justices shall appoint Searchers for Tile, who shall execute the Office, or forfeit to the Queen 10 s.

Cythes.

Tythes.

I Shall be a little larger in this Title; and tho' in Matters which do not concern the Office of a Justice of Peace, yet I am of Opinion, what follows is necessary to be known by them and others.

The Maintenance of the Parochial Clergy, arises,

1. Out of the Glebe, which also takes in the House.
2. By Oblations.
3. By Tythes.

1. The *Glebe* was the Original Endowment of the Church, and it was always settled before the Building, and was to be a Maintenance for those who attended the Service when built.

The Right of Presentation by private Persons was founded on this Endowment, and the Advowson was never in gross originally, but always appendant to Manors, because the Right of Patronage was derived out of the Endowment which issued out of Manors.

The learned Bishop of Worcester tells us, how the Words *Advowson* and *Patronage* came to be used amongst us in this Sense, viz. By the Canon Law, great Churches were allowed to have *Advocates* to solicit their Causes at Court: Afterwards, the Kings of England appointed such *Advocates* to great Monasteries, and this was an Honorary Title in those Days; and then in Time, those who built Parochial Churches came to be called *Advocates* or Patrons of them, from whom the Right of Presentation is called the Right of *Patronage*, or *Jus Advocationis*, which Right, their Heirs were bound to defend, because the Care of such Churches was devolved on them by the Death of their Ancestors.

2. *Oblations*: These were so large in the Primitive Times, that Persons did build Churches on their Lands on Purpose to have an Equal of the Oblations with the Clergy; there was no need then of any established Law to supply their Necessities, because of that great Liberality of the People: But this was usually in great Towns and Cities, and the Clergy had an ample Provision in such Places out of the *Common stock* in lieu of Tythes, and this was called *Sportulation*.

But when Christianity spread into the Countries, then there was a Necessity for a fixed Maintenance of the Clergy; and a * Canon was made, Anno 585, for Payment of Tythes, founded on the Law of God, and the ancient Custom of the Church, the Payment whereof had been *disused* by reason of these voluntary Oblations.

*At Mascon
in France.

We find these *Oblations* were made not only by the Living, but at the Death of the People, in the Time of our *Saxon* Ancestors; and this was then called *Symbolum Animæ*, or the *Saxon* Soul-shot; and the Church, to which the Deceased did belong as a Member thereof, claimed this Duty.

Some are of Opinion, that this was the Original of *Mortuaries*, only altering the Thing given, *viz.* by turning Money into Goods; and therefore when *Glanville* wrote, a Freeholder was allowed to make a *Will*, so as he gave the best Thing he had to the *Lord Paramount*, and the next best to the Church.

But 'tis now generally held, That *Mortuaries* are not due of common Right, but only by Custom, as a Recompence for Tythes subtracted, and Oblations not duly paid, and other Parochial Duties neglected by the Party in his Lifetime. These Oblations being only discretionary, did afterwards sink so low, that without the great and legal Support of Tythes, the Clergy could not be maintained.

3. *Tythes*: These are said to be Ecclesiastical Inheritances, collateral to the Estate in the Land out of which they arise, and are of their own Nature due only to Spiritual Persons.

These are due not only of common Right, but are enjoined by particular Laws, both before and since the Conquest, by which Laws they are to be determined as well as the other Nine Parts.

And the Owner of the Soil can claim no Manner of Right to them; for if he hath the Land by Descent, he can have no Title to the Tythes, because his Ancestors had none; if he has it by Purchase, he never paid for them, because they are set aside in the Valuation of the Land sold.

Now if we consider the Nature of Payment of Tythes, we shall find some general Rules relating to it, but not without some Exceptions.

1 Rule. That Tythes are to be paid only of Things which *Annually* encrease, *Simul & Semel*.

But this Rule is to be understood where there is no Custom to the contrary, for in such Case they are to be paid for Coal, Chalk, Lead, Slate, Stone, Tin, Tuff, which do not Yearly encrease.

As

As for Houses, a customary Duty, or *Modus decimandi*, hath been anciently allowed in lieu of Tythes; but such a Prescription has likewise been denied, because a *Modus* is only payable for the Increase of Things.

The Payment according to the Rule before mentioned being to be only *semel in Anno*, then there can be no Tythes due for After-pasture where Tythe-Hay hath been paid in the same Year; but Custom likewise prevails in that Case.

2. *Rule.* Things which are *fera Natura*, are not Tytheable because a Man hath no Property in such: But *Pidgeons, Rabbits, Bees, &c.* cannot properly be said to be *fera Natura* because they are in Custody in particular Places set apart for those Purposes, and when they go out, 'tis still *domini revertendi*.

'Tis not worth disputing, whether Tythes are due of common Right for such Things, but they are certainly due by Custom; and so likewise of *Fish*.

Tythes being therefore enjoined by the Laws of the Land must be recovered by the Help of those Laws when unjustly detained; but in many Cases *Exemptions* are allowed.

1. By Appropriations.
2. By Privileges of certain Orders.
3. By Prescription, or real Composition.
4. By Unity of Possession.

1. By *Appropriations*, which is the giving particular Churches with their Tythes to Ecclesiastical Persons, as to Monasteries, Priors, &c. for the better Maintenance of Hospitality: These are now become Lay-Inheritances from the Statute of Dissolutions; but in such Case, the Impropriator is to find a Vicar to serve the Cure.

'Tis agreed by learned Men, That the Parochial Right of Tythes was settled here by the *Saxons*, but very much neglected afterwards by the *Normans*, who possessed themselves of those Manors and Lands out of which Tythes were issuing, and built Monasteries and Abbies, and appropriated the Tythes to them.

By this Means the poor Clergy were reduced to a low Condition again; but even in those Cases, the Bishop was to take Care not to admit a *Vicar* presented by the Monks to serve the Cure where the Tythes were appropriated to them, unless they would consent to a sufficient Allowance for his Support.

The Sum was at first left to the Discretion of the Bishop, but they being remiss in those Days in this Matter, it came afterwards to be particularly mentioned in the Decretals, and to be enjoined by the Statutes of Appropriations, That in every appropriate Church, a Secular Person be Vicar.

* 15 R. 2.
c. 6. 4 H. 4.
c. 1.

for before that Statute of 4 H. 4. the Monks presented a Regular One of their own Order, and still kept the Tythes; but by this latter Statute he was to be a Secular Person, and not only Canonically instituted and inducted, but conveniently endowed, (but it was at the Discretion of the Ordinary) or the *Appropriation* was to be void.

These *Appropriations* being Personal, were in their very Nature to endure no longer than the Bodies to which they were united, and therefore upon their Dissolution they were vested in the Crown.

'Tis true, this Power of the Bishops is not mentioned in the Statute of Dissolutions; but yet 'tis not taken away from them by that Statute, for the King had the Monastery and Tythes in as large a Manner as the Abbots had them before the Statute, and there is a *saving the Rights* of all Persons, &c. Now this being an antecedent Right in the Bishops to make an Allowance to the *Vicar*, it must be therefore saved. And this appears by some Resolutions in Law: A Vicar libelled, for that the Church was *appropriated*, and he had not a sufficient Maintenance; and a Prohibition was prayed, but denied, because the Bishop might compel the Impropiator to enlarge it. 2 Rolls 337.

31 H. 8.

This *Endowment of Vicaridges* is usually of small Tythes; yet the *Vicar* may prescribe for Tythes not mentioned in the Endowment, because the Ordinary hath Power to encrease his Allowance.

2. *Exemption*. This is by Privileges of particular Orders: 'Tis true, most Orders of Monks were at first exempted from Payment of Tythes; but in Time this was restrained to Three Orders:

Viz. To $\left\{ \begin{array}{l} \text{Cisterciens.} \\ \text{Hospitalers.} \\ \text{Templers:} \end{array} \right. \text{Dissolved by the Statute of 17 Ed. 2. and their Possessions given to the Hospitalers.}$

But these Privileges had certain Limitations:

1. It must relate to Lands in their Possession before the Council of * *Lateran*; for if given to them afterwards, such Lands had not this Privilege.

* 17 Johan.
Anno 1215.

So that though at the Time of the Dissolution those Lands were discharged of Tythes; yet that must be intended of legal Discharge, because Lands given since that Council were not capable of such Discharge.

2. Where there was an *ancient Composition*, Lands were not discharged by this Privilege, but the *Composition* was still paid, and the Rectors and Vicars who were able, did contest this Matter with the Monks, and prevailed.

These being personal Privileges united to particular Orders, it must necessarily follow, that when these Orders were dissolved, the Privileges were extinct, unless continued by these Acts which dissolved them.

But this was not done by the Statute of 27 H. 8. by which all the little Monasteries and Priories under * Value, were dissolved; so that this Privilege doth not prevail where the dissolved Monasteries, &c. were under Value, because there is no Provision in that Act to exempt their Lands from Payment of Tythes.

* 200 l. per Annum.
* 31 H. 8. And therefore Care was taken * Four Years afterwards, when the great Monasteries were dissolved, that the King should hold their Lands discharged of Tythes, as the Abbots had done before the Dissolution.

3. *Exemption.* This is by *Prescription* and *ancient Composition*: As to *Compositions* real, the Canonists say, *Non valet consuetudo minus quam decima solvatur*; but they allow it to be good where less is paid, in Cases by Personal Tythes which arise out of the Profits by the Labour and Industry of Men; but I can see no Reason why it should not be so in mixt and predial Tythes which arise in the one Case partly by Industry, and out of the Ground, as Milk, Cheese, &c. and the other only out of the Ground, as Fruits, Corn, Hay, &c.

These *Compositions* are usually entered in the Bishop's Register, and were at first made for a valuable Consideration; but since that Time, the Price of Things is much advanced; so that tho' now such *Compositions* bear no Proportion to the real Value of the Tythes, yet Custom doth prevail, and from hence arises what we call a *Modus decimandi*.

But now since the Statute of 13 Eliz. cap. 10. a real *Composition*, tho' made by the concurrent Consent of Parson, Patron and Ordinary, shall not bind the Successor; because by that Statute all Grants which are binding are restrained to 21 Years, or Three Lives.

But as to a *Prescription*, 'tis not allowed in *Lay-Persons* in *modum decimandi*, because none but Spiritual People are capable of having Tythes.

'Tis true, this is allowed to them in *Modo decimandi*, but with some Limitations, viz. it must be immemorial and reasonable; that is, there must be some Recompence for the Parson, and it must be something which is certain and durable; for if otherwise, it shews an original Deficiency in the Custom, and therefore 'tis void.

4. *Exemption.* *Unity of Possession*, that is, where Lands which were formerly tythable, were united by *Appropriation*, or otherwise, to some Monastery or Priory, by this Means they were discharged of Tythes.

But this is more properly a Suspension than a Discharge, because in such Case they cannot in Reason be said to pay Tythes to themselves.

There are likewise some Restrictions in this Matter.

This Unity must be just, and not obtained by Wrong.

It must be equal, that is, the Abbot must have an equal Estate of Inheritance, both in the Land, and in the Tythes; the one is in his Temporal, and the other in his Spiritual Capacity.

It ought to be perpetual; that is, Time out of Memory.

It ought to be *Libera*; that is, discharged at the Time of the Dissolution, and then in the Possession of the Abbot; for if it was in Lease, and their Farmers have paid Tythes to them, the Unity will serve.

A *Quaker* refusing to pay or compound for his great or small Tythes, or to pay Church-Rates, may upon Complaint be summoned before the two next Justices (other than such Justice who is Patron of the Church, or in any wise interested in the Tythes) and examine upon Oath the Truth and Justice of the Complaint, and ascertain what is due to the Person complaining; and if it is under 10 *l.* they may by an Order under their Hands and Seals direct the Payment.

And if such *Quaker* refuse to pay, &c. one of the said Justices may, by Warrant under his Hand and Seal, levy the Money by Distress, &c.

If the *Quaker* finds himself aggrieved, he may appeal to the next Quarter-Sessions; and in such Case no Warrant for Distress shall be granted till the Appeal is determined.

If the Sessions upon the Appeal continue the Judgment, they may give Costs against the Appellant, to be levied by Distress, &c.

No *Certiorari* to be allowed, unless the Title comes in Question.

There is likewise an easy and expeditious Way for all other Persons to recover small Tythes, &c. under 40 *s. per Annum*.

The Person to whom 'tis due, may in Twenty Days after Demand, and within Two Years after it became due, complain in Writing to Two Justices, neither of them Patron of the Church, or interested in the Tythes.

These two Justices may summon the Party by a Writing under their Hands and Seals to appear before them, &c. and after Appearance, and in Default thereof (if the Service of

Quaker,
7 & 8 W.
cap. 34.
To continue for seven Years.

7 & 8 W.
for 3 Years.
Per 10 & 11
W. 'tis continued for 7 Years, and to the End of the next Sessions of Parliament. Per

3 & 4 Ann. 'tis made perpetual.

the Summons is proved on Oath) they may hear the Complaint by Witnesses upon Oath, and may make a Judgment under their Hands and Seals, by making an Allowance for the Tythes, and give Costs not exceeding 10 s.

This Judgment must be enrolled by the Complainant at the next Sessions, for which he is to pay 1 s. and this Enrolment, and Satisfaction made, shall be conclusive for any other Remedy for the same Tythes.

If the Party neglect or refuse to pay the Money so adjudged, in Ten Days after Notice, the Constable and Headborough may levy it by Warrant of the said Justices by Distress and Sale of the Goods of the Offender, which must be paid to the Person complaining; and the Officers may retain such Charges for making the Distress, and for detaining it Three Days (for they cannot sell it before) as the Justices shall think fit.

The Party grieved may appeal to the next Sessions, whose Judgment shall be final, and they may reverse the Judgment of the Two Justices; but if they confirm it, they may give Costs against the Appellant, to be levied by Distress, &c.

If the Defendant removes out of the County, City, &c. after Judgment had, and before the Sum is levied, one of the Two Justices who gave the Judgment may certify it under his Hand and Seal to any other Justice of that Place where the Defendant shall live, which Justice shall cause the Money to be levied by Distress, &c.

'Tis further Enacted, That no such Judgment shall be removed or superseded by *Certiorari*, unless the Title of the Tythes come in Question.

But if the Party against whom the Complaint is made insist on a *Modus*, and deliver the same under his Hand to the Justices, then he giving the Complainant such Security as the Justices shall think fit, to pay the Costs and Damages, which upon a Trial at Law shall be given against him, the Justices shall not proceed, but the Complainant must sue for his Tythes in the Courts above.

The Summons.

To *A. B.* of, &c.

WHereas Complaint hath been made before us, Two of Her Majesty's Justices of the Peace for the County of *Suffex*, That you the said *A. B.* have refused to pay unto *A. C.* Vicar of the Parish of *H.* the small Tythes due to him from you, as by Law you ought: These are therefore to require you to appear before us at the Sign of, &c. on *Wednesday* the 24th Day of *March*, to be examined concerning the Premises. Given under our Hands and Seals, &c.

Tythes.

365

The Order.

To *A. B.* of the Parish, &c.

WHereas Complaint hath been made unto us, Two of Her Majesty's Justices of the Peace for the County of *Sussex*, That *A. B.* being a Person commonly called a Quaker, hath refused to pay or compound for his small Tythes arising in the Parish of *H.* and we having summoned the said *A. B.* before us, and having duly examined the Truth and Justice of the said Complaint upon Oath, do find that there is justly due from the said *A. B.* to the Vicar of the said Parish, the Sum of 3 *l.* being the Value of the small Tythes for two Years last past: We therefore the aforesaid Justices, being neither of us Patron of the said Parish Church of *H.* or any ways interested in the said Tythes, do order and appoint the aforesaid *A. B.* to pay, or cause to be paid unto the said Vicar the aforesaid Sum of, &c. within ten Days after Notice of this our Order. Given, &c.

Two Justices.
Quaker.

The Warrant to distrain in case there is no Appeal,

To the Constable, &c.

Sussex ss. **W**Hereas *A. B.* being a Person commonly called a Quaker, hath been summoned to appear before Two of Her Majesty's Justices of the Peace for this County, to be examined for Non-payment of his small Tythes: And whereas the said Justices have ordered him to pay unto the Vicar of *H.* the Sum of 3 *l.* within Ten Days after Notice of the said Order: And whereas it appeareth unto me *R. B. Esq;* one of the said Justices, that the said *A. B.* had due Notice of the said Order, but doth refuse to pay the said Sum of 3 *l.* These are therefore to require you forthwith to levy the aforesaid Sum of 3 *l.* by Distress and Sale of the Goods and Chattels of the said *A. B.* rendring to him the Overplus, if any shall happen to be. And hereof fail not. Given under my Hand and Seal, &c.

One Justice.

Trade.

DEBT upon the Statute of 5 *Eliz. cap. 4.* may be brought in the Courts at *Westminster*; but an Indictment upon that Statute, for using a Trade not being an Apprentic

prentice to it for Seven Years, may be tried at the Quarter-Sessions.

Some Judges, and particularly Justice *Twisden*, was always of Opinion, That this Statute ought not to extend to Traders in Country-Villages, but only to such in Market-Towns who had not served their Apprenticeship, and yet used Trades in these Towns.

But others have thought, that such a Construction would be very prejudicial to Corporations.

At Common Law, before the making this Statute, any Man might use what Trade he pleased, tho' he had not been an Apprentice to it; and if he did it unskilfully, the Party damaged might have an Action on the Case; which, together with the Loss of his Trade, (for that must be the Consequence where the Skill is wanting) was held a sufficient Punishment; and therefore this Statute has not been much favoured by some Lawyers, nor extended further than it necessarily ought.

An Indictment for using a Trade not being an Apprentice.

Indictment
for using
the Trade
of a Salef-
man, and
held to be
within the
Statute.

Raym. 385.

Suffex ff. JUR', &c. quod W. B. nuper de L. in Com. prædicti Yeoman, 24 die Martii, Anno Regni, &c. & continuo postea usq; diem captionis hujus inquisitionis scilicet viceimum quartum diem Junii, Anno Regni, &c. secundo supradicto (existens per spatium trium mensium integrorum) apud L. prædicti in Com. prædicti illicitè pro lucro suo proprio usus fuit exercuit & occupavit Artem, Mysterium sive manual' Occupation' Pistoris, (Anglice, a Baker) existens. Arte, Mysterio sive manual' Occupation' infra hoc Regnum Angliæ duodecimo die Januarii, Anno Regni Domine Elizabethæ nuper Regine Angliæ, &c. quinto usitat' & approbat' ubi revera idem W. B. eodem duodecimo die Januarii, Anno Regni dictæ Domine Elizabethæ nuper Regine Angliæ, &c. quinto supradicto non usus fuit aut exercuit legitime prædict' Artem, Mysterium sive manual' Occupation' Pistoris prædicti nec aliquem aliam Artem, Mysterium sive manual' Occupation', nec unquam postea educat. fuit prædicti. Arte, Mysterio sive manual' Occupatione Pistoris prædicti per spatium septem Annorum tanquam Apprentice, (Anglice, an Apprentice) contra formam Statut. in hujusmodi Casu editi & prædicti necnon contra Pacem dictæ Domine Regine nunc Coronæ & Dignitatis suas, &c.

Transportation.

Corn may be transported when 'tis at the Prices following, or under, if not prohibited by Proclamation.

| | | l. | s. | d. |
|---------------------|--------------------------------------|----|----|----|
| Wheat per Quarter. | Per 1 Jac. cap. 25. 21 Jac. cap. 28. | 01 | 06 | 08 |
| | Per 3 Car. cap. 4. | 01 | 12 | 00 |
| | Per 1 Will. | 02 | 08 | 00 |
| Barley per Quarter. | Per 1 Jac. cap. 25. 21 Jac. cap. 28. | 00 | 14 | 00 |
| | Per 3 Car. cap. 4. | 00 | 16 | 00 |
| | Per 1 Will. | 01 | 04 | 00 |
| Beans per Qr. | Per 3 Car. cap. 4. | 01 | 00 | 00 |
| Malt per Qr. | Per 1 Will. | 01 | 04 | 00 |
| Oats per Qr. | Per 1 Jac. cap. 15. 21 Jac. cap. 28. | 00 | 14 | 00 |
| Pease per Qr. | Per 3 Car. cap. 4. | 01 | 00 | 00 |
| Rye per Quarter. | Per 1 Jac. cap. 25. 21 Jac. cap. 28. | 00 | 15 | 00 |
| | Per 3 Car. cap. 4. | 01 | 00 | 00 |
| | Per 1 Will. | 01 | 12 | 00 |

And by the Statute of 1 Will. 'tis enacted, That Corn to be transported must be shipped in *English* Vessels, the Master and two Thirds of his Seamen being the Queen's Subjects.

A Certificate under the Merchant's Hand must be brought to the Collector of the Customs, &c. in any Port, both of the Quantity and Quality of the Corn shipped.

This Certificate must be proved before the Collector, &c. upon Oath, which he is impowered to administer.

The Merchant, or other Person, must give Bond in the Sum of 200 *l.* for every Tun of Corn shipped, and so proportionably; the Condition thereof must be, that it shall be transported beyond Sea, (Dangers of the Sea excepted) and not landed in *England*.

And then the Merchant shall receive of the Collector upon Demand, *viz.*

| | l. | s. | d. |
|-------------------------------------|----|----|----|
| For every Quarter of Barley or Malt | 00 | 02 | 06 |
| For every Quarter of Rye | 00 | 03 | 06 |
| For every Quarter of Wheat | 00 | 05 | 00 |

And the Chief Magistrate of the Place beyond the Seas where the Corn was landed, certifying it under the Common Seal, or Two *English* Merchants there under their Hands and Seals, and this Certificate being brought to the Person

who took the Bond, he shall forthwith deliver it to be cancelled without any Fee.

The Money paid by the Collector shall be accepted in his Accounts as so much paid to the Queen.

Treason.

THIS is a Crime of so transcendent a Nature, that it hath not yet been defined; 'tis *Malum in se*, and therefore an Offence at Common Law before the Statute of 25 Ed. 3.

'Tis true, before that Statute, the Judges did usually determine what Treason was, which made it somewhat incertain: But since that Time it hath been generally reduced under Six Kinds; and though more Treasons were introduced by many subsequent Laws, yet that old Statute of Ed. 3. was reinforced by 1 *Marie* 1. so that all made between these Two Laws are abrogated, and the Statute of 25 Ed. 3. is the Standard at this Day.

The Six Kinds of Treason, are these :

- | | | |
|----------------|----|---|
| | 1. | By compassing or imagining the Death of the King, Queen, or Prince, and declaring the same by some Overt-Act. |
| I. Death. | 2. | By killing the Chancellor, Treasurer, Justices of either Bench, or of Assize, <i>Jury</i> and <i>Terminer</i> , in the Administration of Justice. |
| II. Violation. | | To violate or carnally know the Queen, the King's Eldest Daughter unmarried, the Prince's Wife. |
| III. ——— | | Levying War. |
| IV. ——— | | Adhering to the King's Enemies. |
| V. ——— | | Counterfeiting the Great Seal, the Privy-Seal, the King's Coin. |
| VI. ——— | | By bringing Counterfeit Money into <i>England</i> like the Queen's Coin. |

(1.) By compassing or imagining the Death of the King.

Any open Act manifesting a Design to depose or imprison the King, is a sufficient Declaration of compassing or imagining, &c. as providing Arms to effect it, sending Letters to incite wicked Persons to attempt it, writing to Foreign Princes to invade the Kingdom, assembling the People to take the King into their Custody: These, and such like, are Overt-Acts to make one guilty of High-Treason within this Branch

Branch of the Statute, especially if there is any Proof of Words signifying to what Purpose such Acts were done.

And even Words themselves may be laid as an Overt-Act of Treason, for 'tis the natural Way to express our wicked Intentions; and this was * Crohagan's Case, who being beyond Sea, said, *I will Kill the King if I can come at him.* This Person afterwards came into England, and was indicted for Compassing the King's Death, and those Words were laid as an Overt-Act, and being proved, he was convicted of High-Treason. 'Tis true, my Lord Coke was of a contrary Opinion in his *Pleas of the Crown*, Fol. 14. but in the Case of the Regicides, that Opinion was denied to be Law. *Keil. 13.* However he agreed, That Words set down in Writing may be an Overt-Act to prove the Compassing the King's Death.

* Cro. Car. 332.

† So is Printing any Treasonable Positions.

† Twyn's Case.

So is the gathering Men together to compel the King to comply with their Demands, or to remove Evil Counsellors, or to conspire with a Foreign Prince to invade the Kingdom. *Keiling 21.*

But a Man, *Non compos Mentis*, cannot be guilty within this Branch, &c. because he is depriv'd of his Reason, but he may be guilty by attempting any Violence upon the Person of the King, &c.

This Overt-Act must be alledged and proved in every Indictment, &c.

And because a Civil War, and the Destruction of the People, are the natural Consequences hereof, therefore this was Treason at Common Law.

A King before his Coronation, a King *de facto*, is a King within this Act; but the Husband of the Queen-Regent, or the Right Heir to the Crown not in Possession, is not so.

what a Queen.

She must absolutely be so, and not a Dowager.

The Second Son after the Death of the Eldest, the Eldest Son of the Queen *Regnant*, but the Collateral Heir Apparent not within this Statute.

what the Prince.

This doth not extend to a Dowager; if the Queen consents, 'tis Treason in her; but there must be some open Act manifest it, which must appear by plain and not conjectural Proof; and the Offender must likewise be attainted in his life-time, for if he die before Conviction, he cannot be attainted but by Parliament.

(2.) By violating the Du.

This Offence was likewise High-Treason before this Statute, because it utterly destroyed the Certainty of the King's Issue,

Issue, and by consequence raised Contention about the Succession.

(3.) By
levying
War.

A Conspiracy, or compassing to levy War, is no Overt-Act, &c. unless a War is actually levied; this appears by the Statute of 13 *Eliz. cap. 1.* which made such Conspiracy Treason during the Life of that Queen; but if a War is levied, then the Conspirators are all Traitors, tho' not actually in Arms.

And yet the Meeting and Consulting to levy War, tho' no War is actually levied, will be a sufficient Overt-Act to prove the compassing and imagining the Death of the King.

Co. Pl. Cor.
14.

'Tis true, there is an Opinion in my Lord Coke's *Pleas of the Crown* to the contrary; but that Opinion has been denied to be Law.

Now if a Meeting and Consulting to levy War, tho' no War is afterwards levied, shall be a sufficient Overt-Act to prove the Compassing the King's Death a *fusiori*; 'tis so where War is actually levied. *Keil 20.*

Raising Forces for any publick End or Purpose, is Treason; this was the Case of *Cotton*, and other *London Apprentices*, who assembled to pull down *Bawdy-Houses*; they chose Captains amongst themselves, and marched in a Posture of War; they wounded the Constable, and opposed the Guard: All which was found specially at the *Old Bailey*; and upon Consideration of the Fact, some of them were executed. *Sid. 358.*

2 And. 67.

Several conspired in *Oxfordshire* to pull down Enclosures, and to go to the Lord *Norris's* House for Armour, Horses, &c. and from thence to *London*, and to joyn with more; this was held Treason.

Dyer 98. B.

Two or more conspired to levy War, and one of them afterwards actually raised Forces; this was held Treason in all by the Opinion of all the Judges in Sir *Nicholas Throgmorton's* Case, who conspired with *Wyat*.

Some *London Apprentices* were committed for a Riot, and some other Apprentices conspired to release them, and to kill the Lord Mayor, and to provide themselves of Armour, by breaking open Two Houses near the *Tower*; they had a Trumpet, and a Cloak on a Pole instead of a Flag, and were going towards the Lord Mayor's House; but were opposed by the Sheriffs, whom they resisted; and this was held Treason, by levying War, and within the Statute of 13 *Eliz.*

(4.) What
adhering
to the K.'s
Enemies.

By aiding or comforting them, by surrendering any Fort or Castle to them for Reward.

If the Queen's Subject becomes a Rebel, he is not properly called an Enemy, but a Traitor, and shall have Judgment

ment against him as such, and not as an Enemy, because an Enemy is out of the Allegiance of the Queen; and if such a Person is succoured out of the Realm, this my Lord *Hales* tells us is not an adhering to an Enemy within this Clause.

But I can see no Reason for this Difference between an Enemy or Traitor, for I think one and the same Man may be both.

An Enemy coming into *England* in a Warlike Manner, shall be executed by Martial Law; but a Subject assisting him, is a Traitor.

Treason done beyond Sea.

As to this Matter, at Common Law, the Person was to be tried in that County where he had Lands; but now by the Statute of 35 H. 8. cap. 2. it may be tried in B. R. or in any County where the Queen appoints, and so shall Treason committed on the Sea; and this is by Vertue of the Statute of 18 H. 8. cap. 15. though by the Civil Law it must be tried before the Admiral.

Compassing to do it, is not Treason, for it must be actually counterfeited, and it must be like the Great Seal. (5) Counterfeiting the Great Seal.

If the Chancellor put the Seal to a Patent without a Warrant, this is no Treason now, but it was otherwise before the making this Statute, as appears by the old Lawyers, *Brinton* and *Bracton*, who wrote before that Time.

Putting the Great Seal to another Patent, is not Counterfeiting, (as my Lord *Coke* says) but a great Misprision; and this was one *Leak's* Case, who glued Two Parchments so close that it could not be perceived, and put a Label through both, and upon the uppermost he wrote a Patent, and got the Great Seal affixed to the Label, then he took off the written Parchment, and left the Label hanging to the Blank; this was held to be a Misprision.

But I can see no Reason why it ought not to be High-Treason, because it produceth the same Mischief with Counterfeiting which is so; and if it creates the same Mischief, it should in Reason have the same Punishment.

Those who Aid and Consent to Counterfeiting, are within this Statute.

But the Counterfeiting of the Privy-Signet is not Treason within this Act, but it is declared so to be by a subsequent Statute, viz. by 1 & 2 Phil. & Mar. cap. 11.

One *Robinson* counterfeited the Privy-Seal, but he omitted some Words in the Style, and added other Words, on purpose that there might be a Difference between the true Seal and the Counterfeit; he likewise counterfeited a Grant, and by the Help of this counterfeited Privy-Seal, he obtained the

2 Roll.
Rep. 51.

the Great Seal to his Patent : This was declared to be High-Treason, for having collected Money by these Counterfeits, he had usurped Regal Authority.

The Coin.

To forge the Coin, was Treason at Common Law, though the Offender did not utter it; and to counterfeit it, is made so by this Statute.

But *Clipping, Washing, Filing, &c.* was no Counterfeiting it within this Statute; it was made High-Treason by a subsequent Act of Parliament, viz. by 5 Eliz. cap. 11. but it was no Corruption of Blood, or Loss of Dower.

So likewise *Impairing, Diminishing, Falsifying, Scaling, &c.* is not Counterfeiting, &c. but 'tis made Treason by 18 Eliz. cap. 1. without Corruption of Blood, or Loss of Dower.

What is Money,

It is only the proper Money of this Nation; but now Forging or Counterfeiting any Foreign Money, if made Current here by Proclamation, is High-Treason, per 1 Mar. cap. 6.

And Forging it, if not Current here, is a Misprision of Treason in the Principal Forgers, their Aiders and Abettors.

Bringing Counterfeited Money into the Realm.

It must be Counterfeited and made in Imitation of English Money, and brought from Foreign Parts not within the Dominion of the Queen.

It must not barely be uttered here, but it must be brought in and uttered by one and the same Person; if so, 'tis Treason.

Trial.

By the Statute of 7 Will. 3. cap. 3. some Alterations are made in Trials of Traytors; for before that Statute, Men were committed for Treason, and Friends were not suffered to come near them; they had neither Pen, Ink, or Paper, and did not know for what Treason they were committed, or by whom accused; if by chance any Person advised them without Leave of the Court, he was punishable; and if upon the Arraignment the Prisoner desir'd Counsel upon any Point of Law, those Counsel must be ready to argue it *instantly*, and the Court did give Judgment as soon.

'Tis true, he had Liberty to except against any of the Jury, but that could be no Advantage to him, because he never had a Copy of the Pannel to consider against whom to except.

When he produced any Witnesses, they were not to be examined upon Oath, which (as it hath been observ'd) is either too great an Advantage for the Prisoner, or none at all; for if his Witnesses not sworn shall have equal Credit with those which are upon Oath, the Prisoner has too great

an Advantage; but if they are not to have Credit, because not sworn, then why is he suffered to have any Witnesses on his Side?

My Lord Coke, so long ago as in *Anno 11 Jac.* told us, That the Jesuits had slandered our Common Law in the Case of Tryals of Offenders for their Lives, because they had neither Counsel, nor were their Witnesses examined upon Oath. 2 Bulst. 147.

For Truth cannot appear but upon the Testimony of Witnesses, and therefore 'tis absolutely necessary to put the highest Obligation on them on both Sides, which is an Oath.

By this Statute it is provided, That a Person indicted for Treason, whereby Corruption of Blood may be made, or for Misprision of such Treason, shall have a Copy of the whole Indictment Five Days before his Trial, he desiring the same; and this is that he may advise with Counsel, by Two of whom he may make a full Defence, and his Witnesses shall be upon Oath: He is to pay for his Copy not exceeding 5 s. but he is not to have the Names of the Witnesses for the Queen. 7 W. 3. c. 3.

That no Man shall be indicted, tried, or attainted of such Treason or Misprision, &c. but upon the Oaths of Two lawful Witnesses, who shall both speak to the same Overt-Act of Treason, or to different Acts, but of the same Treason, unless the Party is mute, refuseth to plead, or challengeth above 35 peremptorily, or confesseth his Fault.

But such Offender may be outlawed, and if attainted by Outlawry, yet he may come in and be tried by Law after such Outlawry, and he shall upon his Trial have the Benefit of this Act.

And where distinct Treasons of divers Kinds shall be alleged in one Indictment, one Witness to one Species of Treason, and another Witness to another, shall not be Two Witnesses within the Meaning of that Law, and no Evidence shall be given of an Overt-Act, unless expressly laid in the Indictment.

The Prosecution must be within Three Years after the Offence committed, except it be for a Treason in designing or attempting the Assassination of the Queen.

No Indictment, &c. shall be quashed for Miswriting, or for false or improper *Latin*, unless Exception be taken to the same before the Evidence given in Court; neither shall any such Matter be a sufficient Cause to arrest the Judgment after Conviction, yet it may be reversed by Writ of Error.

When a Peer is tried, all the Peers who have a Right to Sit and Vote in Parliament, shall be summoned Twenty Days before the Trial: They must take the Oaths.

But the Act doth not extend to any Indictment for Counterfeiting the Coin, the Great Seal, &c.

After

Dyer 286.b. After Examination of the Offender, and of the Witnesses who are to be upon Oath, the Criminal must be committed. Indictment for Treason must be found in that County where the Fact was done, which may afterwards be removed into B. R.

3 Lev. 396. If it is for levying War, conspiring the Death of the Queen, or adhering to her Enemies, it must conclude *contra Legiantie sue debitum*, and 'tis not sufficient, though the particular Facts set forth therein do shew that what was done by the Offender was against his Allegiance; this was Mr. *Walcor's* Case, who was executed for High-Treason, and his Attainder was reversed in the House of Lords by one Vote.

2 & 3 Annæ. There is a late Statute, which makes it Treason for any Officer and Soldier out of the Realm, either on Land or Sea, to hold Correspondence with any Rebel or Enemy to the Queen, or to give them Advice or Intelligence by Letters, Messages, Signs or Tokens, or any other Way whatsoever, or to enter into any Condition with them without the Queen's Leave, or Licence of the General, Lieutenant-General, or Chief Commander.

The Tryal is to be by a Jury of *Middlesex*, or by a Special Commission.

8 & 4 Annæ. And by another Law 'tis made Treason, during the War with *France*, to send, or cause to be sent, loaded, transported or delivered, to the Use of the *French* King, or of any of his Subjects residing within his Dominions, or in any Town or Territory in his Possession, these Goods following:

| | | | |
|--------|----------|-----------|------------|
| viz. { | Arms, | Iron, | Powder, |
| | Bullets, | Masts, | Saltpetre, |
| | Cordage, | Ordnance, | Tar. |
| | Hemp, | Pitch, | |

Being in- to France Any Person since 4 *Maii* going voluntarily into *France*, or into any of the *French* King's Dominions in *Europe*, without Licence from the Queen; or who have born Arms for the *French* King since that Time, and who shall Return or Continue here without such Licence under the Privy-Seal after 25 *Martii* 1705, shall be guilty of Treason.

Voluntarily going, repairing or imbarcking, in any Vessel after 25 *Martii* 1705, without Licence from the Queen, and with an Intent to go into *France*, or any Dominions of the *French* during the War, is Treason.

If either of these Offences shall be done out of the Realm, or if any Person shall be guilty of Returning or Continuing here as aforesaid, it may be tried in any County.

There is likewise another Treason made by the Act, *For the better Security of Her Majesty's Person and Government, &c.* 4 & 5 Anne. 6 Anne. and that is, If any Person after the 25th of March 1706, shall maliciously, advisedly, or directly, by *Writing or Printing*, declare or affirm, That the Queen is not lawful Queen, or that the pretended *Prince of Wales* hath any Title to the Crown, or that any other Person hath a Right to it, otherwise than according to the Act of Settlement made 1 & 2 W. or that the Kings and Queens of *England* are not able, by the Authority of their Parliaments, to make Laws sufficient to limit and bind the Crown of this Realm, shall be guilty of High-Treason; and being thereof convicted and attainted, shall suffer Death, and all Losses and Forfeitures as in Cases of High-Treason.

And if any One, by *Preaching, Teaching, or advised Speaking*, shall declare, maintain and affirm, as aforesaid, such Person being lawfully convicted, shall incur the Penalty of a *Præsumptum*.

But if the Prosecution be for Words; there must be Information given of such Words upon Oath, to one or more Justices of Peace within Three Days after the Words are spoken; and then the Prosecution must be within Three Months after such Information; and the Conviction must be by Oath of Two credible Witnesses.

The Form of a *Mittimus*.

To the Keeper of the Common Gaol, &c.

Suffex ff. I Send you herewith the Body of T. R. who was brought before me this present Day, and charged with High-Treason: These are therefore to command you to take the said T. R. into your Custody, and him safely to keep in your Gaol, till he shall be from thence deliver'd by due Course of Law. Given under my Hand and Seal, &c.

Then the Justice must take a several Recognizance of every Witness to appear at the Assizes, and give Evidence against the Prisoner.

In High-Treason there are no Accessaries, but all are Principals, and therefore my Lord Coke tells us, That what will make a Man Accessary to a Felony before the Fact, the same will make him a Principal in High-Treason. *Accessaries.*

Petty-

Petty-Treason.

THIS consists in Three Particulars, by the Statute of 25 Ed. 3.

1. Where a Servant killeth his Master.
2. A Wife killing her Husband.
3. Ecclesiastical Persons killing the Ordinary.

1. Ser-
vant kil-
ling his
Master.

This extends likewise to the Mistress who hath no Husband, and to the Wife of the Master.

If a Servant hath Malice against his Master whilst he is in his Service, and afterwards, being out of his Service, killeth him, this is Petty-Treason; but killing him upon a sudden Quarrel, is Manslaughter.

2. Wife
killing her
Husband.

If she procure another to murder her Husband, she is only Accessary, unless she was present in the House when the Fact was committed, though not in the same Room, and she shall be hanged, and not burnt, because she as Accessary cannot be guilty of Treason where the Principal is guilty of Murder; but if the Person procured is a Servant, then 'tis Petty-Treason in both.

3. Eccle-
siastical
Persons
killing
their Or-
dinary.

If she, and another not being her Servant, killeth the Husband, 'tis Petty-Treason in her, and Murder in the other.

Petty-Treason doth not suppose a Trust and Obedience in the Offender, which is either Civil, as in the Cases above-mentioned, or Ecclesiastical, as in this Case.

But this Statute shall not be construed according to Equity, and therefore if the Son killeth the Father or Mother, 'tis not Petty-Treason, unless he was a Servant receiving Wages, as well as a Son.

Aiders, Abettors, and Procurers, are adjudged to be within this Act.

An Indictment against a Servant for killing his Master.

Middl. ff. *JUR. quod W. G. de, &c. 21 die Martii Anno Regni, &c. in domo mansionali W. N. apud H. in Com. pred. Gen. vi & armis, viz. cum quodam cultello ad voluntatem quatuor denar. quem idem W. G. aditunc & ibidem in manu*

sua dextra tenuit in & super præd' W. N. adtunc magistrum suum & in pace dictæ Domine Regine existen' voluntarie & ex malitia sua præcogitata insultum fecit & præfat' W. N. adtunc magistrum suum adtunc & ibidem cum cultello præd' felonice & proditorie apud H. præd' in Com' præd' percussit & vulneravit, & eidem W. N. apud H. præd' in Com' præd' felonice proditorie & ex malitia sua præcogitata cum cultello præd' unum vulnus mortale in & super dextram partem ventris sui dedit longitudinis duorum pollicium & profunditatis unius pollicis de quo quidem vulnere mortali idem W. N. a præd' 31 die Martii, Anno supradicti usque quintum diem Aprilis prox' sequen' apud H. præd' languebat & languidus vixit quo quidem quinto die Aprilis, Anno supradicti præd' W. N. apud H. præd' in Com' præd' de vulnere mortali præd' obiit & sic iur' præd' saper sacramentum suum præd' dicunt quod præfat' W. G. prædict' quinto die Aprilis Anno supradicti apud H. præd' in Com' prædict' præfat' W. N. modo & forma ex malitia sua præcogitata voluntarie felonice & proditorie interfecit & muraravit contra pacem, &c. & quod quidam A. B. de H. præd' ante prodicionem prædict' per præfat' W. G. sic ut præfertur factam videlicet 27 die Martii, Anno supradicti eundem W. G. apud H. præd' in Com' præd' ad prodicionem præd' in forma præd' perpetranda' felonice consului, excitavit & procuravit contra pacem, &c.

Against a Wife for murdering her Husband.

Suffex ff. **I**ur', &c. quod E. N. nuper de, &c. Vidua nuper Uxor R. N. de H. in Com' præd' Gen' Deum præ oculis suis non habens sed instigatione diabolica seducta contra debitum matrimonii sui vinculum ac contra amorem quem eadem E. N. erga præfat' R. N. nuper virum suum gerere deberet ex malitia sua præcogitata 31 die Martii, Anno Regni, &c. apud H. præd' in Com' præd' vi & armis in & super præfat' R. N. virum suum in pace Dei & dictæ Domine Regine adtunc & ibidem existen' insultum fecit (as in the former.)

Definition of Treason.

THis is when one knoweth of any Treason, and conceal-eth it; but it must be a bare Knowledge only, for if the Person consents to the Treason, he is a Traitor.

Therefore the Party ought, as soon as may be, to reveal it to some Magistrate.

Misprision of Treason.

But receiving a Traitor, and comforting him, knowing him to be such, he is a principal Traitor himself.

If one knowing upon what Design Persons meet, and hear them discourse of Treason, tho' he says nothing himself, or doth any Act towards it, yet this is Treason; for 'tis more than a Concealment, because, by his Silence, he gives Consent to what was then doing.

But if he did not know upon what Design they met, and he casually hears their traitorous Discourses, and says nothing, and never comes again to their Consultations, this Concealment is only Misprision of Treason; but if he comes into their Company again, and hears their Discourses, and then conceals it, this is High-Treason, for it sheweth his Approbation of their Design: And this was Sir *Everard Digby's* Case, who was present at the Powder-Treason, met with the Traitors, and heard their Discourses, but neither said or acted any Thing. For to make Misprision of Treason, there must be a Knowledge of the Design, (as already hath been observed) and of the Persons, or some of them, and likewise a Concealment of it, for a Man cannot be said to conceal what he doth not know: And therefore if I tell a Man, that there will be a Rising at such a Time, and do not mention the Persons who are to be in Arms, or the Nature of the Plot, and this is concealed by that Person to whom I told it, 'tis but Misprision of Treason, because he had no Knowledge of the Treason it self.

But if a Man knows the Conspirators, and then in general Discourse tells the People there will be a Rising, and doth not discover the Plot, or the Traitors, this is Misprision of Treason; for notwithstanding such general Discourse, he conceals both the Treason and Traitors. The safest Way in these Cases, would be to discover the Treason to some Magistrate; for if to a Person who hath not Authority to take an Examination, it may be a Question, Whether such a Discovery will acquit him from Misprision of Treason. *Keeling 22.*

Trial. See Jurors.

THE Trial of an Alien, who lived here under Protection of the Laws, if it be for Treason, it shall not be *per medietatem Linguae*; but 'tis otherwise in Petit-Treason, Murder or Felony. 1 & 2 Phil. & Mar.

But such a Trial *per medietatem Linguae*, is not to be allowed *ex Officio*, or *ex debito Justitiæ*, but at the Instance of the Party; for if he doth not desire it, 'tis to be as at Common Law by a Jury of English Men. Dyer 144.b.

If a Man commits Treason in Ireland, he may be tried here; and this was *Orork's Case*. 1 And. 262.

By the Statute of 33 H. 8. 'tis enacted, That if a Person is examined by Three of the King's Council, upon Treason, Murder, &c. and confesseth it, or is suspected by the Council to be guilty; in such Case, the King, by a special Commission, may have the Offender tried in any Place. 33 H. 8. cap. 23.

One *Grevel* was examined before the Council as *Accessary* to a Murder in *Warwickshire*, and it was adjudged, That he should be tried *there*, because he was examined as an *Accessary*, and not for the Murder itself. 1 And. 194.

But regularly Indictments must be found in the proper County, and the Trial must be by Jurors of that County.

Stroke in one County and Death in another, the * Offender shall be tried where the Party died. 2 & 3 Ed. 6. cap. 24. * But by a Jury of both Counties. Dyer 56. Sid. 335.

A Trial cannot be had the same Sessions in which the Party is indicted, unless in Criminal Cases, and that is in *favorem Libertatis*.

But then the Offender must be in Custody; but this seems not to be agreeable to Reason, that a Criminal should have a longer Time allowed him to advise in trivial Matters, than in those which concern his Life.

Yet the Defendant was indicted and tried the same Sessions for a *Barrettry*, and held good, because he appeared; and in such Case, upon his Appearance, he may be tried as well then as afterwards. 2 Cro. 404.

Tunnets, See Dogs.

Vagrants.

Under this Title Rogues are comprehended, and such are these which follow :

Egyptians. —
 Bearwards. — 21 *Jac. cap. 28.*
 Beggars. —
 Fencers. — 21 *Jac. cap. 28.*
 Fidlers. —
 Fortune Tellers. — }
 Glass-men. — 21 *Jac. cap. 28.*

| | | |
|------------------------|---|--|
| Incorrigible Rogues. — | { | Who Misreports the Place of his Birth, or of his last Abode for a Year. If the Place of his Birth is not known, such a Person is to be sent to the House of Correction in that County where he is sent ; and if there is none there, then to the Gaol till the next Sessions: If he is adjudged to be incorrigible in open Sessions, he is to be branded on the Left Shoulder with the Letter R. and if he offend again, 'tis Felony without Clergy. 1 <i>Jac. cap. 7.</i> |
| Jugglers. — | { | Running away, and leaving his Charge to the Parish. 7 <i>Jac. cap. 4.</i> |
| Labourers. — | { | Able to work and refusing, threatening to leave their Charge to the Parish: This last Person, upon Oath of Witness before Two Justices, shall be sent to the House of Correction, unless he can give Bond to secure the Parish. |
| Mariners. — | { | Begging without a Testimonial of the Place of their Landing, Dwelling or Birth. 39 <i>Eliz. cap. 4 cap. 17.</i>
Counterfeiting a Certificate from their General, Captain, &c. |

39 *Eliz.*
cap. 4.
 2 *Cro. 577.*
 2 *Rol. Rep.*
 172.

The Defendant was indicted upon this Statute. He lived at *Brentford*, and wandered in *Middlesex* as a Pedlar, carrying Goods to sell in private Houses, and not in Fairs or Markets ; and upon Demurrer to this Indictment it was objected, That it did not lie for an Offence which was *past*, because he was to be punished by the Justices when he should be *actually*

usually taken wandering; and that going about in the same County where he was an Inhabitant, did not make him a Wanderer or Vagabond: But it was held, that 'tis not *the being taken* which makes the Offence, but 'tis the *wandering*; and though he had a Place of Habitation, yet that did not excuse him.

Pedlars. —

Petty-Chap-
men. — }

Players. — 21 *Jac. cap. 28.*

Scholars, — Begging.

Servants, — Leaving Service without a Testimonial.

Soldiers. — { Begging without a Testimonial from a Ju-
stice of Peace (near the Place of their Land-
ing) expressing the Place of their Dwelling
or Birth, &c.

Their
Punish-
ment
whip-
ping.

Tinkers. —

One Justice of Peace may cause any of the Persons above-mentioned to be *whipped*, if Begging, Wandering or Misordering themselves. 21 *Jac. cap. 28.*

The like may be done by the Constable, with the Advice of the Minister. 39 *Eliz. cap. 4.*

The Constable is the proper Officer to execute this Punishment.

Formerly they were to be sent from Parish to Parish, the next Way to the Place of their *Birth*; and if that could not be known, then to the Parish where they last did *dwell* by the Space of a Year; and if that was not known, then to the Place through which they passed unpunished, and the Officers of that Place were to send them to the House of Correction, there to remain till they could get a Service for a Year.

where
they and
their Chil-
dren are to
be sent.

If such Vagrant have *Wife*, or *Children under Seven Years* old, they must be sent to the Village or Place where he *passed* without Punishment, and they must be relieved there by his Work in the House of Correction.

Sturdy Persons threatening to leave their Charge to the Parish, two Justices upon Oath of two Witnesses may send them to the House of Correction, there to be punish'd as wandering Rogues; they may be discharged at next Sessions, and sent to the Place where they last dwelt by the Space of a Year.

Those who are sent, must be delivered to the Churchwardens and Overseers of the Poor; and if they refuse to take them, they forfeit 5 *l.* by 39 *Eliz. cap. 4.*

Children *under Seven*, tho' Vagrant, must be sent to the Father or Mother where born or dwelt for a Year.

If above Seven Years old, and Vagrant, must be sent to the Place of their Birth; so if under Seven, and the Mother dies *in transitu*.

11 & 12
3.

But now by a Statute 11 *Will.* 'tis enacted, That if any Vagabond, Beggar, or other Person, shall be brought to a Constable by a *Pass*, he shall carry him before a Justice who dwells nearest the Place, who is to send him to the House of Correction if he finds him a Person who ought to be punish'd, and to take such farther Course with him as the Law directs; or if such Person is not to be punish'd, then the Justice may order him immediately to be conveyed by the Constable out of the County, to such Town of the next County (as the Justice shall think fit) through which such Persons are to pass or be conveyed.

The Justice is to give the Constable a Certificate of the Number of Persons whom he shall order to be punish'd or conveyed, and the Manner how, when, and from whence, whether by Cart, Horse or Foot, and how many Persons the Constable had Occasion to employ to bring such Persons before him, or for conveying them to the House of Correction, or to the next County.

On the Backside of this Certificate, the Justice is to tax a reasonable Allowance for the Expence and Trouble of the Constable.

This Certificate the Constable is to deliver to the High-Constable of the Division, and he is to pay the Sum so taxed out of what he shall receive for the Gaol and Marshal-Money, and take a Receipt for the same.

The High-Constable must deliver this Receipt to the Treasurer of the County-Stock at the next Sessions, who is to pay and discount the same.

And if there is no Surplus of the Gaol and Marshal-Money to satisfy the Constable, then the Justices in Sessions may raise Money in their respective Counties, as is usual for Gaols and Bridges.

Allowances so raised must Quarterly be paid to the High-Constable; and the Petty-Constable producing a Certificate of his Expences under the Hand and Seal of the Justice, the High-Constable must pay the same, and take in the Certificate, and Account for it at next Quarter-Sessions.

Petty-Constables shall not charge the Parishioners with any Money towards Relief or Conveyance of Rogues and Vagabonds.

Constables or other Officers neglecting to apprehend Vagrants, or being negligent in the Premises, forfeit 20 s. for every Offence, One Fourth to the Informer, the other Three Parts to the Poor of the Parish, to be levied by Vertue of a Warrant of one Justice by Distress and Sale, &c.

One Justice may upon Oath of one Witness hear and determine the Offence.

This Act related only to Vagrants with Passes; but by 1 Anne 'tis enacted, That whether they come with Passes or without, they shall be conveyed as in the former Act. 1 Annæ.

And that no High-Constable shall pay the Rates taxed on such Certificate as above mention'd, unless the Headborough produce a Receipt from the Constable of the adjacent County, (to whom he is order'd to deliver the Vagrant) that he hath received such Vagrant, who must receive him and give such Receipt.

And if any Constable, or other Officer, shall refuse or neglect to do his Duty as enjoined by that Act, he forfeits 20s. to be recovered as by the Act of 11 & 12 W. before-mentioned.

Both those Acts before-mention'd are now by another Act, 5 Anne, continued for the Space of Seven Years; and 'tis farther provided, That where the charitable Use-Money shall not be sufficient to pay the Charges, and Loss of Time of Constables, and others, in passing Vagrants, the Justices in their Sessions may assess every Parish in such Sums as they shall think fit to discharge the Sum, which shall be levied and collected as Money is for the Repair of County-Bridges, and disposed as the Sessions shall direct. 5 Annæ.

But if any Person be aggrieved by the Constable's Demands for his Disbursements, or by any Tax or Rate, or other Act done either by them or any other Person which may concern the said Demands, there lies an Appeal to the next Sessions, whose Judgment shall be final.

The Form of a Pass to the Place of Birth.

To the Constable of the Hundred of *Retherfield*, &c.

Suffex ss. **W**Hereas T.C. a Vagrant, aged about 50 Years, was this Day brought before me T. B Esq; one of Her Majesty's Justices of the Peace for the County afore-said, (* and was by my Appointment punish'd as by Law he ought) and upon his Examination and other Circumstances, it appearing that the said T. C. was born in the Parish of B. near *Leeds* in *Yorkshire*: I do therefore order and appoint you to convey the said T. C. out of the County of *Suffex*, to the Parish of *Speldhurst* in the County of *Kent*, thro' which he is to pass towards the Place of his Birth: And you are to deliver the said T. C. to the Officer of the said Parish of *Speldhurst*, and likewise to bring a Certificate from them, or some or one of them, that they received him of you accordingly. Given under my Hand and Seal, &c.

*Leave out this Sentence if the Vagrant is not punished.

Where the Place of Birth is not known.

To the Constable and Headborough of, &c.

Suffex ss. **T.** C. a Vagrant, aged, &c. was taken at B. in the said County, and brought before me T. B. Esq; &c. and by my Appointment was then and there punished as by Law he ought: And the Place of his Birth being not known; but he having confessed before me, that the last Place of his Habitation before the said Punishment was in the Parish of H. &c. where he dwelt by the Space of one Year: These are therefore to order and appoint you to convey the said T. C. to the aforesaid Parish of H. and to deliver him to the Officers thereof, who are to receive him and put him to Labour. Given, &c.

Where the Place of Birth, nor last Abode, is not known.

To the Constable, &c.

Suffex ss. **A**S in the former Warrant. And for that neither the Place of his Birth, nor the Parish where he did last dwell before the said Punishment by the Space of one whole Year are known: You are therefore to convey him to the Parish of H. &c. thro' which he did last pass without being punish'd, as upon Examination of the said T. P. it appeareth unto me.

Certificate from the Justice.

To the Constable of the Hundred of, &c.

Suffex ss. **T**Hese are to certify you, That on the 7th Day of April last past, I did order T. C. a Vagrant, to be conveyed on Foot by the Headborough of D. in the said County, and from S. in the said County of, &c. to R. in the County of, &c. pursuant to the Statute in that Case made and provided; to which Place he was conveyed accordingly, as I have since been credibly informed: I do therefore appoint you to pay unto the said Headborough out of the Gaol and Marshalsea-Money by you received, the Sum by me taxed and endorsed on this Certificate for his Expence and Charge in conveying the said Person to R. as aforesaid, and take his Receipt for the same, which you are to deliver to the Treasurer of the County-Stock at the next Quarter-Sessions to be held, &c. who is hereby required to discount the same to you. Given under my Hand and Seal, &c.

The usual Sum to be allowed is 6 d. per Mile for Carriage either by Horses or Carts, and 1 d. per Mile for a Horse.

Verdict.

IN Capital Cases, the Jury cannot be discharged before the Verdict is given.

And it must be given openly in Court, for no Privy Verdict is allowed in such Cases.

But the Jury may find Matter specially, *viz.* If the Indictment is for Murder, they may find the Defendant guilty of Manslaughter, Chancemedley, or *se Defendendo*; but then they must find in what Manner, that the Court may judge of the Law arising upon the Fact.

Manfell was indicted for Murder. The Foreman of the Jury said he was guilty of Manslaughter; the rest of the Jury inform'd the Court, that they did not agree to that Verdict. Then the Court asked *Manfell*, whether he would be discharged of that Jury. He consented, and the Prisoner was tried by another upon the same Indictment, and found guilty of Murder, and had Judgment to be hanged.

The Verdict must be perfect; and therefore if upon the Statute of 8 H. 6. the Jury find, *viz.* *si Domus prad' non fuit in possessione Dom' Reg'*, then *Billa vera*; this is void, for 'tis a Conditional Verdict.

There is no Necessity of finding the Value of any Thing as laid in the Indictment: More they cannot find, but less they may.

1 And. 103.

Yel. 15.

Wages

OF Artificers, Servants and Labourers, &c.

| | | <i>l.</i> | <i>s.</i> | <i>d.</i> | |
|-------------------|---|--------------------------|-----------|-----------|----|
| Apprentices | { Of all Artificers — | In Summer <i>per Day</i> | 00 | 00 | 10 |
| | | With Meat | 00 | 00 | 05 |
| | | In Winter <i>per Day</i> | 00 | 00 | 08 |
| | | With Meat | 00 | 00 | 04 |
| Arrow-head-makers | { His Servant <i>per Ann.</i> | 03 | 00 | 00 | |
| Baker | { His Setter, Seasoner and Furer, <i>per Ann.</i> | 04 | 10 | 00 | |
| | His common Servant <i>per Ann.</i> | 03 | 00 | 00 | |
| Blacksmith | { Best Servant <i>per Ann.</i> | 04 | 00 | 00 | |
| | { Common Servant <i>per Ann.</i> | 03 | 00 | 00 | |
| | | | | Howyer | |

| | | l. | s. | d. |
|------------|---|----|----|----|
| Bowyer | { Best Servant <i>per Ann.</i> ———— | 04 | 00 | 00 |
| | { Common Servant <i>per Ann.</i> ———— | 03 | 00 | 00 |
| Brewer | { Head Brewer <i>per Ann.</i> ———— | 05 | 00 | 00 |
| | { Common Servant <i>per Ann.</i> ———— | 04 | 00 | 00 |
| Bricklayer | { In Summer <i>per Day</i> ———— | 00 | 01 | 06 |
| | { With Meat ———— | 00 | 00 | 09 |
| | { Winter <i>per Day</i> ———— | 00 | 01 | 04 |
| | { With Meat ———— | 00 | 00 | 06 |
| Brickmaker | — Per Thousand ———— | 00 | 04 | 00 |
| Butcher | — His Servant <i>per Ann.</i> ———— | 04 | 00 | 00 |
| | { From <i>Easter</i> to <i>Michaelmas</i> <i>per Day</i> ———— | 00 | 01 | 08 |
| | { With Meat ———— | 00 | 00 | 10 |
| Carpenter | { In Winter, from <i>Michaelmas</i> to } ———— | 00 | 01 | 06 |
| | { <i>Easter</i> <i>per Day</i> ———— } ———— | 00 | 01 | 06 |
| | { With Meat ———— | 00 | 00 | 09 |
| | { In Summer <i>per Day</i> , and Winter, ———— | 00 | 01 | 08 |
| Carver | { With Meat ———— | 00 | 00 | 10 |
| | { Servant ———— | 00 | 00 | 08 |
| | { With Meat ———— | 00 | 00 | 04 |
| Clothier | { His Foreman <i>per Ann.</i> ———— | 05 | 10 | 00 |
| | { Common Servant ———— | 04 | 10 | 00 |
| Coaling | { Carrying four Cords of Wood } ———— | 00 | 04 | 08 |
| | { to Heath, and covering and } ———— | 00 | 04 | 08 |
| | { coaling it ———— } ———— | 00 | 04 | 08 |
| Cook | — His Servant <i>per Ann.</i> ———— | 04 | 10 | 00 |
| Cooper | { His best Servant <i>per Ann.</i> ———— | 04 | 00 | 00 |
| | { His second Servant ———— | 03 | 00 | 00 |
| Currier | { His best Servant <i>per Ann.</i> ———— | 03 | 10 | 00 |
| | { Common Servant ———— | 03 | 00 | 00 |
| Cutler | { His Foreman <i>per Ann.</i> ———— | 03 | 10 | 00 |
| | { Common Servant ———— | 03 | 00 | 00 |
| Dyer | { His Wringer and Under-Dyer } ———— | 06 | 00 | 00 |
| | { <i>per Ann.</i> ———— } ———— | 06 | 00 | 00 |
| | { Out of the whole Ground four } ———— | 00 | 00 | 08 |
| | { Foot wide, two Foot deep, } ———— | 00 | 00 | 08 |
| | { and one Foot at Bottom, <i>per</i> } ———— | 00 | 00 | 08 |
| | { Rod ———— } ———— | 00 | 00 | 08 |
| Ditching | { If nine Foot wide, four Foot } ———— | 00 | 01 | 06 |
| | { deep, and four Foot in the } ———— | 00 | 01 | 06 |
| | { Bottom, <i>per Root</i> ———— } ———— | 00 | 01 | 06 |
| | { Cleansing them, half that Price. } ———— | 00 | 01 | 06 |
| Farrier | — See in <i>Blacksmith</i> , same Wages. | | | |
| Faggots | — Per Hundred making ———— | 00 | 00 | 10 |
| Fletcher | — See in <i>Bowyer</i> . | | | |

Wages.

587

| | | l. | s. | d. |
|----------------|-------------------------------|----|----|----|
| | In Summer per Day | 00 | 01 | 04 |
| | With Meat | 00 | 00 | 08 |
| Glasier | In Winter per Day | 00 | 01 | 02 |
| | With Meat | 00 | 00 | 07 |
| | His Water-Man per Ann. | 05 | 00 | 00 |
| Glover | His common Servant | 03 | 10 | 00 |
| Harvest-men, | From the Beginning to the End | 02 | 15 | 00 |
| (See Servant.) | Best Servant per Ann. | 04 | 00 | 00 |
| Hatter | Common Servant per Ann. | 03 | 00 | 00 |
| Hedging | Per Rod | 00 | 00 | 02 |
| Hop-pickers | Per Day | 00 | 00 | 06 |
| Hosier | Per Ann. | 04 | 00 | 00 |
| | Per Day in Summer and Winter | 00 | 01 | 08 |
| | With Meat | 00 | 00 | 10 |
| Joyner | Servant | 00 | 01 | 02 |
| | With Meat | 00 | 00 | 07 |
| | By the Day in Summer | 00 | 01 | 02 |
| | With Meat | 00 | 00 | 07 |
| Labourer | By the Day in Winter | 00 | 00 | 10 |
| | With Meat | 00 | 00 | 05 |
| Lath-clearer | Per Hundred | 00 | 00 | 04 |
| Lime-burner | Per Ann. | 04 | 00 | 00 |
| | Free-Mason in Summer per Day | 00 | 01 | 08 |
| | With Meat | 00 | 00 | 10 |
| Mason | In Winter per Day | 00 | 01 | 06 |
| | With Meat | 00 | 00 | 09 |
| | His Grinder per Ann. | 04 | 00 | 00 |
| Miller | Loader per Ann. | 03 | 10 | 00 |
| | His best Servant per Ann. | 04 | 00 | 00 |
| Milner | Common Servant | 03 | 00 | 00 |
| | In Summer per Day | 00 | 02 | 00 |
| | With Meat | 00 | 01 | 04 |
| Milwright | In Winter per Day | 00 | 01 | 08 |
| | With Meat | 00 | 00 | 10 |
| | By the Day | 00 | 01 | 04 |
| | With Meat | 00 | 00 | 09 |
| Mowers | By the Acre-Grafs | 00 | 01 | 08 |
| | Oats or Barley per Acre | 00 | 01 | 00 |
| | By the Rod, with one Rail | 00 | 00 | 08 |
| Paling | even-headed | 00 | 00 | 05 |
| | Uneven-headed | 00 | 00 | 05 |
| | His Fore-man per Ann. | 04 | 00 | 00 |
| Pewterer | Other Servant | 03 | 00 | 00 |
| | In Summer per Day | 00 | 01 | 06 |
| | With Meat | 00 | 00 | 09 |
| Plasterer | In Winter per Day | 00 | 01 | 04 |
| | With Meat | 00 | 00 | 08 |
| | Plough- | | | |

| | | 6 | s. | d. |
|-------------|--------------------------------------|----|----|----|
| Ploughman. | Head-Ploughman <i>per Ann.</i> | 05 | 00 | 00 |
| | His Under-Ploughman <i>per Ann.</i> | 03 | 00 | 00 |
| | Boy, from 14 to 18, <i>per Ann.</i> | 02 | 00 | 00 |
| Plumber. | In Summer <i>per Day</i> | 00 | 01 | 08 |
| | With Meat | 00 | 00 | 10 |
| | In Winter <i>per Day</i> | 00 | 01 | 04 |
| Potter. | With Meat | 00 | 00 | 08 |
| Potter. | His Servant <i>per Ann.</i> | 04 | 00 | 00 |
| Railing | By the Rod, single Rail | 00 | 00 | 02 |
| | Double Rail | 00 | 00 | 04 |
| Reaping | By the Day | 00 | 02 | 00 |
| | With Meat | 00 | 01 | 00 |
| | Woman <i>per Day</i> | 00 | 01 | 00 |
| | With Meat | 00 | 00 | 06 |
| Sadler | By the Acre | 00 | 04 | 00 |
| | His best Servant <i>per Ann.</i> | 04 | 00 | 00 |
| | Common Servant | 03 | 10 | 00 |
| Sawyers | By the Day, the same as Bricklayers. | | | |
| | By the Hundred Oak Boards | 00 | 02 | 06 |
| | Elm or Ash | 00 | 02 | 04 |
| | Slitting | 00 | 02 | 08 |
| | Best Man-servant <i>per Ann.</i> | 05 | 00 | 00 |
| Servants | Second Sort <i>per Ann.</i> | 03 | 00 | 00 |
| | Other Sort <i>per Ann.</i> | 02 | 00 | 00 |
| | Best Woman-servant <i>per Ann.</i> | 03 | 00 | 00 |
| | Second Sort | 02 | 10 | 00 |
| | Other Sort | 02 | 00 | 00 |
| Shoemaker | Servants in Harvest with Meat | 01 | 15 | 00 |
| | Second Sort in Harvest with | | | |
| | Meat | 01 | 10 | 00 |
| Sheerman | Best Servant <i>per Ann.</i> | 03 | 10 | 00 |
| | Other Servant | 02 | 10 | 00 |
| Shipwright. | <i>Per Ann.</i> | 04 | 00 | 00 |
| | Master-Hewer <i>per Day</i> | 00 | 02 | 00 |
| | With Meat | 00 | 01 | 04 |
| | Clencher <i>per Day</i> | 00 | 01 | 00 |
| | With Meat | 00 | 00 | 10 |
| Spurrier | Cawker <i>per Day</i> | 00 | 01 | 00 |
| | With Meat | 00 | 00 | 00 |
| | Mean <i>per Day</i> | 00 | 01 | 00 |
| Tanner | With Meat | 00 | 00 | 00 |
| | His Servant <i>per Ann.</i> | 03 | 00 | 00 |
| Taylor | His Market-man <i>per Ann.</i> | 05 | 10 | 00 |
| | Other Servant | 03 | 00 | 00 |
| | His Fore-man <i>per Ann.</i> | 03 | 10 | 00 |
| | Sewer <i>per Ann.</i> | 03 | 00 | 00 |

Thatch

| | | l. | s. | d. |
|-----------|---|---|----|-------|
| Thatcher | { | In Summer <i>per</i> Day | 00 | 01 06 |
| | | With Meat | 00 | 00 09 |
| | { | In Winter <i>per</i> Day | 00 | 01 04 |
| | | With Meat | 00 | 00 08 |
| | { | By the Hundred with Reed | 00 | 00 08 |
| | | His Man <i>per</i> Day in Summer | 00 | 01 00 |
| | { | With Meat | 00 | 00 06 |
| | | In Winter <i>per</i> Day | 00 | 00 10 |
| | { | With Meat | 00 | 00 05 |
| | | Wheat by the Quarter | 00 | 01 08 |
| Thrasher | { | With Meat | 00 | 00 10 |
| | | Oats and Barley | 00 | 01 00 |
| | { | With Meat | 00 | 00 06 |
| | | His Servant <i>per</i> Thousand | 00 | 01 08 |
| Tilemaker | { | With Meat | 00 | 00 10 |
| | | For Ridge-Tile <i>per</i> Hundred | 00 | 02 06 |
| | { | For Corner and Gutter-Tile <i>per</i> Hundred | 00 | 02 00 |
| | | | 00 | 02 00 |
| Tiler | — | The same with Sawyer <i>per</i> Day. | | |
| Tucker | — | <i>Per Ann.</i> | 04 | 00 00 |
| Turner | — | <i>Per Ann.</i> his Servant | 03 | 00 00 |

By the Statute of 39 *Eliz. cap. 12.* & 1 *Jac. cap. 6.* the Rates of Wages both of Servants and Labourers are to be assessed by the Justices in their Sessions every *Easter*.

And by 5 *Eliz. cap. 4.* he who giveth *greater Wages* forfeits 5 *l.* and may be committed for Ten Days without Bail; and he who taketh more, being convicted before two Justices, shall be committed 21 Days without Bail.

See the Warrants for Wages in the Title Apprentices.

An Indictment lies for giving more Wages than assessed by the Justices.

Warrants: See Constable.

This is a Precept in Writing, under the Hand and Seal of the Justice of the Peace. Concerning the

It ought to contain the *Cause*, and therefore a Warrant to answer such Things as shall be objected, without mentioning any Thing in particular, is not good. This is the Opinion of my Lord Coke, 2 *Inst.* 591. Warrant it self.

If any Person *abuses* the Warrant, as by throwing it in the Dirt, or treading it under Foot, or not executing it, 'tis a *Con-*

Contempt of the Queen's Process, and he shall be indicted and fined.

The Justice ought not to grant a *Blank Warrant*, for this is finable; nor a Warrant for Felony, without examining the Person who required it, upon Oath, and binding him over to give Evidence.

The Officer.

This being the Person to whom it is directed, he ought to execute it with all convenient Speed; and if 'tis a Warrant for the Peace or Good Behaviour, he may break open the Doors.

Upon arresting the Party, he need not shew his Warrant, but he ought to declare the Contents of it.

If he is *resisted* or assaulted, he may justify the Beating and Wounding, &c.

If after the Arrest the Officer lets his Prisoner go, upon his Promise to return or appear, he cannot retake him upon the first Warrant, because it was executed; but if the Prisoner escape, he may take him upon a *fresh Pursuit* without another Warrant.

If a Justice grants a Warrant in Cases beyond his Authority, the Officer must *obey*; but if it be where he hath no Jurisdiction, or in a Cause where he is not properly a Judge, if the Officer executes such Warrant, he is punishable.

As if a *Poor Rate* is illegally assessed, and afterwards levied by a Warrant from the Justice, &c. this will not excuse the Church-wardens. *Cro. Car.* 394.

Where a particular Person who hath an Authority to act, commits a *Mistake* in any Thing which is in his Power or Jurisdiction, in such Case the Officer will be excused for executing it; but where he *exceeds his Authority*, all is void, because 'tis limited.

Where the Party is to be brought.

If the Warrant is general, *viz.* To be brought before the Justice who grants it, or any other Justice, &c. the Constable, who is the Officer and Minister of Justice, may carry the Party before any Magistrate, because he is presumed to be an indifferent Person, and sworn to execute his Office duly, and therefore 'tis reasonable that the Election should be in him. *5 Rep. Foster's Case.*

It was the Opinion of my Lord Chief Justice *Wray*, That the Justice, &c. may grant a Warrant to bring the Person before himself, because he who hath taken the Examination is most fit to do Justice.

Where the Officer is liable to false Imprisonment.

If the Warrant is to apprehend *A. B.* and there are several of that Name, and the wrong Person is arrested, an Action of false Imprisonment lies.

If after the Arrest the Officer procures a Warrant, having none before; this is a wrongful Taking, and the Officer is liable to the like Action. *Dyer 244.*

If a Warrant is granted to take R. N. the Son of T. N. and the Officer arrests R. N. the Son of W. N. tho' he is the Offender, yet 'tis false Imprisonment, because he had no Warrant against such a Person. *Quere.*

By the Common Law, if an Action of false Imprisonment had been brought against an Officer arresting another upon Suspicion of Felony, it was no Plea for him to say, That the Person was suspected, &c. but he must alledge in Fact, That a Felony was committed, and that the Plaintiff was suspected thereof; and he must likewise alledge some special Matter to induce a Belief of such Suspicion, as that the Plaintiff is a Man of no Credit, &c. and must likewise plead, that the Defendant himself had a Suspicion of him.

But this is now remedied by the Statute of 7 Jac. 5. by which the Constable may plead the General Issue, and give the special Matter in Evidence; which, together with the Warrant, will be a sufficient Excuse for him.

Indictment for not executing a Warrant: See Constable.

Watch.

IN Walled Towns, the Gates ought to be shut from Sun-set to Sun-rising, and none shall lodge in the Suburbs except the Host will answer for him. *5 H. 4. cap. 5. 5 Ed. 3. cap. 5.*

Any Justice may cause the Watch to be set; but no Man is compellable to watch, unless he is an Inhabitant in the Town.

If a Person who ought to watch, and is commanded by the Constable so to do, refuseth, 'tis a Question whether he may put him in the Stocks; but he may complain to a Justice of Peace, who may bind the Offender over to the Sessions, or the Constable may present him there. *Cro. Eliz. 204, Leon. 208. same Case.*

An Indictment for not Watching.

Middl. ff. *Jur.*, &c. quod R. O. nuper de Paroch' Sancti Martini, in Campis in Com' Middl. Labourer, 14 die Aprilis, Anno, &c. & diu antea fuit Inhabitans in Paroch' præd' quodq; R. O. adtunc & ibidem scil' præd' 14 die Aprilis, Anno supra dicto debito modo summonitus fuit ad vigiland' cum Constabulario in Paroch'

Paroch' præd' in nocte ejusdem diei præd' tamen R. O. debitum suum in hac parte negligens in præd' nocte ejusdem diei Anno supradicti vel in aliqua parte ejusdem noctis non vigilavit cum præd' Constabulario apud Paroch' præd' in Com. præd' sed hoc facere adtunc & ibidem totaliter neglexit & voluntarie & obstinate defalt' fecit in contemptum dictæ Dom' Reg' nunc & legum suarum & contra pacem dictæ Dom' Reg' nunc Coron' & dignitat' suas.

A Warrant by Order of Sessions to keep Watch and Ward.

To the Constable and Headborough of the Hundred of L.

Midd. ss. **W**HEREAS several Robberies, Felonies, and other Crimes, have been lately committed in the County aforesaid; it was therefore order'd at the last General Quarter-Sessions of the Peace, held at L. for the said County, That Watch and Ward be duly set and kept in all and every usual Place and Places within your Hundred. You are therefore to take Care, that the same be done pursuant to the said Order; and you are likewise to apprehend all idle and suspicious Persons, and bring them before us, or some other of Her Majesty's Justices of the Peace for the said County, in order to proceed against them according to Law. And hereof fail not at your Perils. Given under our Hands and Seals, &c.

A Mittimus to the House of Correction of one apprehended by the Watch.

To the Keeper of the House of Correction.

Suffex. ss. **W**HEREAS R O. was this present Day brought before me, H. P. Esq; one of Her Majesty's Justices, &c. the said R. O. being taken last Night by the Watch, set by the Constable of, &c. and charged with wandering Abroad at unseasonable Times of the Night, and also with other disorderly Behaviour: These are therefore to require you to take the said R. O. into your Custody, and him safely to keep, until he shall be deliver'd by due Course of Law from thence, and in the mean Time to make him labour, allowing him such Maintenance as he shall earn thereby, and you are to punish him as by Law is required. You are likewise to bring him to the next Quarter-Sessions, &c.

Weaver.

HE who useth the Trade of *Cloth-worker* out of a City or Borough, must keep but *One Loom* in his Possession, or make any Profit by letting out a Loom; Forfeiture is 20 s. 2 & 3 *Phil. & Mar. cap. 11.*

But a *Woollen-Weaver* living out of a City, &c. shall keep Two Looms, and no more; like Penalty.

A *Weaver* who is not a *Cloth-worker*, shall not keep a *Tucking-Mill*, or use the Trade of a *Tucker*, *Fuller*, or *Dyer*, forfeits 20 s. per Week.

A *Fuller* or *Tucker* shall not keep a Loom; or make any Profit thereby, under the like Penalty.

Weers.

Weers in Rivers may be viewed by One Justice, and he may cause them to be made wider.

Making *Weers* within Five Miles of the Mouth of any Haven or Creek, or making them to destroy any Fry of Fish of the Sea, forfeits 10 l. to the Queen and Informer. 3 *Jacob. cap. 12.*

Weights and Measures.

Here are Two Sorts of Weights, { 1. *Troy Weight.*
2. *Averdupois.*

Every Weight hath 12 Ounces to the Pound; and by this are weighed, { Bread.
Gold.
Pearl.
Jewels.
Silks.
Silver.
Wheat.

Averdupois hath 16 Ounces to the Pound;
and by these are weighed,

Butter.
Cheese.
Drugs.
Flesh.
Flax.
Grocery.
Hemp.
Iron.
Steel.
Lead.
Pitch.
Tar.
Tallow.
Wax.
Wool.

These, and all Commodities which are garbled, and of which any *Refuse* is made, are weighed by *Averdupois* Weight, and to every Hundred there is an Allowance of 12 Pounds, and so *pro Rata*.

The Bushel must contain Eight Gallons, or Sixty four Pints of Wheat, and must be kept sealed in every City, Borough or Town. 11 H. 6. *cap.* 8. 31 *Ed.* 1. 12 H. 7.

Eight Bushels make a Quarter of Corn strided. 15 R. 2. *cap.* 4. The Standard of Bushels, Gallons and Ells, must be signed with an Iron Seal of the Queen's; and if any sell or buy with Measure unsealed, he shall be amerced. 31 *Ed.* 1. the Statute *de Pistoribus*.

This Standard must be kept by the Mayor and Bailiffs of the Town, and Six Persons must be sworn, before whom all Measures must be sealed. 31 *Ed.* 1.

Every Measure must be according to this Standard, and shall be strided, and not heaped. 25 *Ed.* 3.

Gallons.

| | |
|-----------------------|--|
| Tun of Wine is—252 | } 2 H. 6. <i>cap.</i> 11.
1 Ric. 3. <i>cap.</i> 13. |
| The Pipe is—126 | |
| Barrel of Herrings 30 | |
| But of Salmon—40 | |

If Vessels made contrary to that Statute, the Owner forfeits the Commodities therein contained to the Lord of the Town where found, but the Prosecutor must have a Fourth Part.

Justices of Peace have Power to hear and determine the Offences.

Every

Every City, Borough and Town, must have a common Balance, and sealed Weights, in the Keeping of the Head-Officer or Constable there; otherwise the City forfeits 10*l.* the Borough 4*l.* and the Town 40*s.* to the Queen.

Justices of the Peace have Power to hear and determine these Offences. 8 H. 6. cap. 5.

The Mayor shall have 1*d.* for *sealing* a Bushel, and for every other Measure a Half-penny.

If he refuse or delay to *seal*, he forfeits 40*s.* to be divided between Queen and Party grieved. 7 H. 7. cap. 4.

Two Justices (*Quorum unus*) have Authority, as well by Examination as by Inquiry, to hear and determine Faults of Mayors and Head-Officers, and of Buyers and Sellers otherwise than by the Standard, and set Fines at Discretion; defective Weights and Measures are forfeited, and must be burnt. 11 H. 7. cap. 4.

But now by the Statute of 22 Car. 2. cap. 8. 'tis prohibited to sell Corn, Grain or Salt, otherwise than by the Standard, and the Bushel must be *struck even with the Brim*, and sealed: The Forfeiture for every Offence is 40*s.* the Conviction to be by Oath of One Witness before One Justice, Mayor or Head-Officer, and it must be levied by a Warrant directed to the Church-wardens and Overseers of the Poor, for the Use of the Poor of the Parish where the Offence is committed; and if no Distress can be had, the Party may be committed without Bail till he pay the Penalty.

If Head-Officers of Cities, Boroughs or Corporations, suffer any Person to sell or buy by other Measure, and if upon Complaint do not punish the Offenders, then if they are convicted at Sessions, they forfeit 5*l.* to the Poor and Informer; and if no Distress can be had, they may be committed till Payment.

Constables may search and examine if any Persons use other Measures, &c. and if they find any unsealed, may break them, and may present the Offender at the next Quarter-Sessions.

By 22 & 23 Car. 2. cap. 12. buying or selling Corn or Salt without measuring (if required), or in any other Manner than is directed by the former Acts of 22 Car. 2. forfeits, besides the 40*s.* all the Corn or Salt, or the Value thereof, to the Person grieved; and upon Complaint to One or more Justices of the Peace, the Proof shall lie upon the Person accused, who must make it appear by Oath of One Witness, That he did buy or sell according to this and the former Statute.

If he fail in such Proof, he forfeits all the Corn or Salt, or Value thereof, which is to be divided between the Informer and Poor where the Offence is committed.

Weights and Measures.

This is to be levied by Warrant from one or more Justices, &c. before whom convicted.

A Warrant to levy the Penalty for selling heaped Measure without striking the Bushel.

To the Church-wardens and Overseers of the Poor of the Parish of, &c.

22 Car. 2.
cap. 8.
One Justice.
One Witnesses on
Oath; per
17 Car. 2.
cap. 19.

Suffex ff. **W**Hereas R. O. of &c. hath been duly convicted before me, for that on the 17th Day of April last past, in the Parish of H. aforesaid, he did sell Corn in a Bushel heaped with the same, and not stricken even by the Wood or Brim thereof, as by Law he ought; for which Offence he hath forfeited 40 s. These are therefore to require you forthwith to levy the Sum of 40 s. upon the Goods and Chattels of the said R. O. by Distress and Sale thereof; and that you employ the same to the Use of the Poor of the said Parish of H. where the said Offence was committed: And hereof fail not. Given under my Hand and Seal, &c.

Another Warrant to levy the Value of the Corn sold, besides the 40 s.

To the Constable and Headborough of, &c. and to the Church-wardens and Overseers of the Poor of the Parish of H.

22 & 23
Car. 2. cap.
12.

Suffex ff. **W**Hereas Complaint hath been made unto me That R. O. of, &c. did on the 17th Day of April last past, in the Parish of H. in the said County, sell Corn by a Bushel not agreeable to the Standard marked at Her Majesty's Exchequer, commonly called *Winchester-Measure* (or that the Buyer did shake the Bushel, or that the Bushel was unsealed, or that it did not contain Eight Gallons, as the Case is). And whereas the said R. O. hath failed to prove before me by the Oath of one or more credible Witnesses, That he did sell (or buy, as the Case is) the same by a Bushel agreeable to the said Standard (or as the Case is), and thereupon stands legally convicted of the said Offence: These are therefore to require you forthwith to seize the said * Corn, the same being forfeited, and that you distribute one Half thereof to the Poor of the said Parish of H. where the said Offence was committed, and the other Half to R. P. of

* If that cannot be had, then the Value thereof.

Parish of, &c. who informed me thereof: And hereof fail not. Given under my Hand and Seal, &c.

An Indictment against a Mayor for suffering any other Measure to be used.

Suffex ff. **JUR.** &c. quod quidam W. B. Major' & Capitalis Officiar' Burgi de L. in Com' prad. 19 die Aprilis, Anno Regni, &c. scienter & voluntarie permittit quendam R. H. infra limites Burgi prad. & infra Jurisdictionem prefat. W. B. ad tunc Major' & Capitalis Officiar' Burgi prad' existen' vendere duas Quarterias tritici apud L. prad. in Com' prad' mensurati per modum non congruen' (Anglice, not agreeable) exagio signat' in Scaccario prefat. Domina Reginae communiter vocat. the Winchester-Measure, contra formam Statut. in hujusmodi casu edit. & provis. & contra Pacem, &c.

22 Car. 2. cap. 8. Forfeiture 5 l. to Informer and Poor. Conviction must be upon Indictment or Presentment at Sessions.

The like Indictment (*mutatis mutandis*) for suffering Corn or Sals to be bought or sold in a Bushel not stricken by the Brim, or if upon Complaint he shall not punish or reform those who offend in these Cases.

The Forfeiture is 5 l. for every Offence; the Conviction must be by Indictment, or Presentment at Sessions, and then to be levied by Distress and Sale of the Goods of the Offender; and if that cannot be had, then he may be committed till 'tis paid; but there must be Two Justices at least to sign the Warrant of Commitment.

Indictment against the Clerk of the Market, or against a Mayor, for taking excessive Fees for sealing Weights, &c.

Suffex ff. **JUR.** &c. quod R. H. de L. in Com. pradict. Clericus mercati in & pro L. prad. 19 die Aprilis Anno Regni apud L. pradict. * quatuor denarios pro sigillatione cujusdam mensurae (vocat. a Bushel) de quodam W. B. colore Officii sui prad. tunc Clericus mercati prad' existen. injuste & extortiose cepit contra formam Statut. in hujusmodi casu edit. & provis. & contra Pacem, &c.

* 'Tis but one Penny per Stat. 22 Car. 2.

The like Indictment may be (*mutatis mutandis*) for neglecting or refusing (being required) to seal, &c. Forfeiture for the first Offence is 5 l. and for the second Offence 10 l.

Weights and Measures.

Things are number'd after this Manner :

Barrel contains — { 256 Pints,
128 Quarts,
32 Gallons,
4 Firkins,
2 Kilderkins,
4 Bushels. } This Vessel being empty,
should weigh 13 Pounds,
per 23 H. 8. cap. 4.
Ale Barrel contains 32 Gallons,
Beer Barrel 36 Gallons, per 1 W.

Barrel (Half) { 16 Gallons. } This Vessel being empty, should
weigh 13 Pounds, per 23 H. 8.
2 Firkins. } cap. 4.

Beef ——— A Pound is 16 Ounces Averdupois.

Bushel is — { 64 Pints,
32 Quarts,
8 Gallons,
4 Pecks, } See 31 Ed. 1. 12 H. 7.

Butter ——— Must be measured as Soap, 14 Car. 2. cap. 2, 6.

Clove ——— Is 8 Pounds Averdupois.

Coals ——— A Sack is 3 Bushels.

Coom ——— The same with Barrel.

Ell ——— Is 3 Foot 9 Inches.

Fathom ——— Is 7 Foot.

Flesh ——— A Pound is 16 Ounces.

Firkins — { 64 Pints,
32 Quarts,
8 Gallons,
4 Pecks. } This Vessel being empty, must
weigh 6 Pounds and an half.
23 H. 8. cap. 4.
Of Beer, is 9 Gallons. } Statute
Of Ale, is 8 Gallons. } 1 Will.

Foot ——— Is 12 Inches.

Furlong ——— Is 40 Poles in length.

Gallon is — { 8 Pints.
4 Quarts.
2 Pottles.

Handful ——— Is 4 Inches.

Hemp ——— 20 Pounds make a Stone. 21 H. 8. cap. 12.

Herrings — { A Barrel must be 32 Gallons. 13 Eliz. cap. 11.
If sold by Tale, then 120 goes to the Hun-
dred.

Hide

Weights and Measures.

599

Hide of Land—Was 100 Acres formerly, now 80 Acres.

Hides of Leather — } Dicker is 10 Hides.
 ther. — } 20 Dickers is a Last, or 20 Hides.

Hoghead is — { 512 Pints.
 { 256 Quarts.
 { 64 Gallons.
 { 8 Firkins.
 { 4 Kilderkins.
 { 2 Barrels.
 { 8 Bushels. } Of Wine, Oil, or Honey, is
 63 Gallons.

Hops ——— 112 Make the Hundred.

Kilderkin, or } 16 Gallons, } Of Ale, is 16 } Gallons.
 Half-Barrel, } 2 Firkins, } Of Beer, 18 }

Last ——— Is Ten Thousand.

Laths must be { 5 Foot in length
 { 2 Inches broad.
 { Half an Inch thick.

Mile is — { 8 Furlongs.
 { 320 Perches or Poles.
 { 1056 Paces.
 { 1409 Ells.
 { 1760 Yards.
 { 5280 Foot.
 { 63360 Inches.

Nails ——— 120 make the Hundred.

Oxgang ——— Is 13 Acres.

Paper ——— { 10 Reams, or 200 Quires, make a Bale.
 { Ream is 20 Quires, or 500 Sheets.
 { Quire is 25 Sheets.

Parchment ——— A Roll is 5 Dozen; Or 50 Skins.

Peck ——— Is 8 Quarts.

Perch ——— The same with Pole.

Pins ——— 120 make the Hundred.

Pipe ——— Is 126 Gallons of { Wine.
 { Oil.
 { Honey.

Weights and Measures.

Plow-Land—The same with Hide of Land.

Pole ——— is 16 Foot and an half.

Pottle ——— Is Two Quarts.

Quart ——— Is Two Pints.

Quarter of Corn is— { 8 Bushels stricken. } See 11 H. 7. cap. 4.
25 Ed. 3. cap. 10.
34 Ed. 3. cap. 6.

Rod *alias* Rood—The same with Pole.

Rondlet is — { 16 Gallons,
 { 2 Firkins } Of Wine, Oil and Honey; but
 of the last, 'tis Sixteen Gal-
 lons and an half.

Soap ——— Must be of the Measure as Ale is.

Stone ——— Is Eight Pounds!

Tiles ——— 120 make the Hundred.

Timber ——— Hewed and squared, 50 Foot is a Load.

Tun is ——— 252 Gallons of $\left\{ \begin{array}{l} \text{Wine,} \\ \text{Oil, or} \\ \text{Honey.} \end{array} \right.$

Weigh — { Of Cheese, in *Suffolk* is 256 Pounds: In *Essex*,
 300 Weight, after the Rate of 112 lb. to
 the Hundred.

Wool — { A Stone is 74 Pounds.
Tod is 28 Pounds.
Sack is 26 Stone, 11 *Hen. 7. cap. 4.* Or 364 Pounds.
Weigh is 182 Pounds, or Six Tod and an half.

Yard Is 3 Foot.

Yard Land — Is either 20, 24, or 30 Acres.

25aker.

Mr. Dalton makes a *Quere*, Whether Bakers shall be amerced after an Indictment and Conviction for breaking the Assize of Bread? Or whether the *Justices of Peace* have Power to take away unlawful Bread, and give it amongst the Poor, as Officers in Corporate Towns usually do?

'Tis true, by the Statute of 12 Ed. 4. cap. 8. the Justices of Peace have no Authority in this Matter, for by that Statute none but *Mayers, Bailiffs, or Lords of Leets*, have Power of correcting those Offenders, which is by *Pillory*.

And

And this might be the Reason why the Justices of Peace in *Middlesex*, Anno 7 Car. as Mr. Dalton likewise tells us, made an Order to stay all Proceedings upon Indictments preferred against *Bakers*, because they doubted whether the Sessions had any Jurisdiction to hear and determine this Offence.

The Punishment is by *Pillory*, as aforesaid, and therefore in every Market-Town and Leet there ought to be a Pillory, and in Default thereof the Lords of the Leet, or the Owner of the Market, may be fined.

But for selling by *False Weights* and Measures, an Indictment will lie, notwithstanding a Punishment is appointed by the Statutes abovementioned in another Method, because this was an Offence at Common Law. See more in Title *Indictments* as to this Matter.

His *Toll-Dish* ought to be according to the Standard, and he ought to take but One Quart for grinding a Bushel of hard Corn brought to his Mill; but if he fetch it, and carry it home, then Two Quarts.

For *Malt*, he is to take but half the Toll he taketh for Corn, because that is easily grinded.

These Offences are punishable in the Leet; but for *changing a Grist*, a Miller may be indicted at the Sessions, for 'tis a Wrong done by Deceit, and is *contra pacem*.

Westminster-Hall: See Sessions.

Woman. See in Felony.

TAken away by Force, is a Crime which is not mitigated, though the Marriage is by Consent afterwards. 3 H. 7. c. 2.

The Preamble of this Statute is, *viz. That Maids, Widows, and Wives, having Substance in Goods, Lands and Tenements, and some being Heirs at Law, have been taken away for the Lucre of such Substance against their Wills, and married or defiled;* and then 'tis enacted, That he who taketh any Woman so against her Will, shall be a Felon.

A Man enticed the only Daughter of her Father (who would be worth 5000*l.*) to see a Ship, and when he had her on the *Thames*, carried her by Force and Threats into the Country, and there married her; but the Truth was, she had a Brother, and this was held not to be within that Statute, because the Preamble mentions the Estate and Condition of the Woman taken away, &c. and restrains the Purview to these particular Cases:

• Also the Procurer, Abetter, and wilful Receiver of such Woman, Clergy taken away, per Stat. 39 El. cap. 9.

(1.) There

- (1.) There must be a Taking by Force.
- (2.) She must have Substance in Lands, Goods, &c.
- (3.) Or she must be *Heir Apparent*.
- (4.) She must be married or defiled.

Now in this Case, the Woman had not a present Substance in Good, for her Father was living, and she was not *Heir Apparent*, for she had a Brother then alive. *Hob. 182. Hutt. 2.*

But admitting a Woman hath Substance, &c. or is *Heir Apparent*, another Question hath been made upon this Statute, Whether the taking such Woman by Force, and threatening her to make a Contract for a Marriage, is Felony or not? And held in the Negative: For tho' in the Body of the Act 'tis said, That the Taking by Force is Felony, yet the Intention of the Law is afterwards expounded, *viz.* It must not only be a Taking by Force, but Marrying or Defiling. 'Tis true, Justice *Croke* was of a contrary Opinion, but the other is Law at this Day.

1 And. 115.
Savil. 59.

4 & 5 Phil.
& Mar. c. 8.

There is another Statute, and 'tis the last of *Phil. & Mar.* which relates to the taking away *any Woman-child* under the Age of Sixteen Years out of the Custody, and against the Will of the Father or Mother, or of the Person to whom the Father devised the Child; the Punishment in such Cases is Two Years Imprisonment without Bail, or to pay such Fine as shall be imposed on him by *B. R.*

* To the
Queen, and
Party grie-
ved.

If he *defile* or *marry* such Child, he shall be imprisoned Five Years, or pay a * Fine, &c.

If such Child is above Twelve and under Sixteen Years, and consenting to marry, then the next of Kin to whom her Inheritance should come shall enjoy it during her Life; but after her Decease it shall go to the *Heir at Law*, but never to the Husband.

A Freeman of *London* devised the Custody of his Daughter to *C.* and died, the Daughter being then in the Country, *C.* gets a Warrant from the Chief Justice to take her, which he did, but she was then married to *B.* This was held to be out of the Statute, because the Child was never in Possession of the Guardian. *Sid. 363.*

This last Statute seems to be an Affirmance of the Common Law, for if (before the Statute) a Man came to the Father's House and contracted with his Daughter under Fifteen Years of Age, and by Appointment meeting and marrying him, this is punishable by Fine and Imprisonment. *Sid. 387.*

March 52.
Cro. Car.
557.

An Information was exhibited against the Defendant, for an unlawful Practice and Combination, in procuring a *Clandestine*

destine Marriage in the Night between a Maid-Servant and a Young Gentleman, who was Heir to an Estate, and this was without Banes or Licence; and the Parson being drunk, they were fined 100 Marks, and committed till paid.

An Indictment on the Statute.

Middl. ff. JUR. &c. quod P. R. generosa 6 die Novemb. 1702. existens. Virgo & innupta & Neptis & Hares G. R. sen. adtunc defunct. & Filia & Hares W. R. antetunc etiam defunct. fuit etatis sexdecim Annorum & amplius & infra etatem octodecim Annorum & adtunc habuit opes & hereditatem in mobilibus & in terris & tenementis (viz.) in pecuniis Bonis & Catallis ad valentiam trium mille librarum & in terris & tenementis ad valentiam 201. per Annum sibi & heredibus de corpore suo & quod H. S. nuper de Paroch. Sancti Egidii in campu in Com. Middlesex, Yeoman, præd. 6 die Nov. vi & armis præfat. P. R. existens. innupt. & hares ut præfertur & habens opes hereditat. apud Paroch. Sancti Egidii in Camp. in Com. præd. pro lucro hujusmodi opum & hereditat. præd. P. R. illicite Felonice violenter & contra voluntatem præd. P. R. capiebat abducebat & asportabat præfat. P. R. ea intentione causare & procurare præd. P. R. contra voluntatem in Matrimonio præfat. H. S. jungi & ei nubere & in Nuptiis contrahi & quod præd. H. S. existens. Homo inhonestæ conversationis & nullius vel paululum fortune vel census adtunc & ibidem per auxilium & procurat. S. B. de Paroch. &c. Felonice nupsit præfat. P. R. & in Matrimonio fuit ille conjunct. & adtunc & ibidem illum carnaliter cognovit ad magnam displicentiam Dei contra leges Regine ad infamiam & dedecus præd. P. R. & ad magnum dolorem & tristitiam omnium suorum amicorum ad malum exemplum omnium aliorum contra formam Statut. & contra pacem dictæ Domine Regine Coron. & Dignitat. suas; & quod A. B. postquam præfat. P. R. tam illicite violenter & felonice capt. abduçt. & asportat. fuit & præfat. H. S. nupt. & in Uxorem duçt. ut præfertur sciens præd. P. R. sic capt. & abduçt. fuisse contra voluntatem suam & præfat. H. S. nuptam esse postea; viz. præd. 6 die Novembris, Anno Regni Domine Regine nunc primo apud Paroch. præd. eandem P. R. ac etiam præd. H. S. voluntarie scienter & felonice recipiebat, abettabat, confortabat, occultabat & auxiliebatur & præd. H. S. cum præfat. P. R. jacere & illum carnaliter cognoscere adtunc & ibidem felonice incitabat. abettabat, adinuvabat, causabat & procurabat contra formam Statut. & contra pacem Domine Regine nunc Coron. & Dignitates suas.

Woods.

Woods.

35 H. 8.
cap. 7.

Several Laws have been made for the Preservation of Wood and Timber, the most material are ; Where Coppices are fell'd at or under 24 Years growth, there shall be left in every Acre 12 *Standils of Oak* ; and if so many do not grow there, then it shall be supplied with the like Number of Elm, Ash, Asp, or Beech, or for every Standil not so left, the Owner forfeits 3 s. 6 d.

These Standils must not be felled till they are 10 Inches square within 3 Foot of the Ground, under the Forfeiture of 3 s. 6 d.

If felled above 24 Years growth, and not leaving so many Standils, *&c.* forfeits *per* Standil 6 s. 8 d.

Must not fell such Standils which are left till 20 Years afterwards ; Forfeiture for every Tree so felled within that Time, 6 s. 8 d.

But such Standils may be felled for the Use of the Owner of the Soil in Building, *&c.*

Under-
woods,
13 Eliz.
cap. 25.

* This must
be done by
him who hath a lawful Interest and Possession in the Woods, and it
must be set
forth in the Information, or 'tis ill. Cro. Eliz. 127.

Underwoods felled at 14 Years Growth or under, shall for 6 Years afterwards be preserved from Destruction of Cattle, or the Owner shall forfeit for every Rood *per* Month unfenced 3 s. 4 d.

If above 14 Years, and under 24 Years Growth, then must be preserved for 8 Years.

If above 24 Years, then must be preserved for 9 Years.

No Cattle shall be put in from the Time of felling such Coppices till 5 Years afterwards ; nor then neither but Calves or early Colts until the End of 6 Years, if the Coppice was under 14 Years Growth when felled ; or until the End of 8 Years, if it was 14 Years Growth.

Coppice-Wood containing 2 Acres and upwards, and being 2 Furlongs distant from the House of the Owner, shall be converted into Tillage or Pasture ; Penalty is *per* Acre 2 l.

These Forfeitures are to be recovered in any Court of Record, and go to the Queen and Prosecutor.

Woods or Underwoods shall not be converted into Coal for making Iron, which grow,

2. Within

1. Within 22 Miles of *London* or Suburbs.
2. Or within that Distance of the *Thames* from *Dorchester* in *Oxfordshire* downwards.
3. Or within 4 Miles of the Foot of the *Downs* between *Arundel* and *Pemsey* in *Com. Sussex*.
4. Or within 4 Miles of *Winchelsea* or *Rye*, 2 Miles of *Pemsey*, 3 Miles of *Hastings*.

The Penalty is 40 *s.* per Load between Queen and Prosecutor, per Stat. 23 *Eliz. cap. 5.*

This Act doth not extend to Woods growing in the Welds of *Surrey*, *Sussex* or *Kent*, within 22 Miles distant of *London*, nor to such which are distant above 18 Miles from thence or the *Thames*.

No new Iron-works are to be built within 22 Miles of *London*, 14 Miles of the *Thames*, or 4 Miles of the *Downs*, of *Pemsey*, *Winchelsea*, *Hastings*, or *Rye*: Penalty 100 *l.* between the Queen and Prosecutor, per Statute 23 *Eliz. cap. 5.*

Furnaces, &c. shall not be erected in *Sussex*, *Surrey* or *Kent*, otherwise than upon old Bays or Penns where such Works have been lately standing.

Or upon Lands where such Works may be continually supplied with Woods of the Owner of such Furnace without committing Waste; the Penalty is 300 *l.* between the Queen and Prosecutor.

If Oak, Ash, or Elm, being Timber, and a Foot square in any Part, shall be converted into Coal or Fuel for Iron-works; the Penalty is 40 *s.* per Tree between the Queen and Prosecutor.

Lops of such Trees may be coaled in those Counties, but not within 18 Miles of *London*, 8 Miles of the *Thames*, 4 Miles of *Rye* and *Winchelsea*, 3 Miles of *Hastings*, or 4 Miles of the Foot of the *Downs* between *Arundel* and *Pemsey*.

See for more relating to this in Title *Hedge-breaking*, where you will find the Statute 15 *Car. 2.* mentioned; and these Precedents which follow, relate to that Act.

A Warrant against one for stealing Wood.

To the Constable and Headborough, &c.

Sussex ss. **W**Hereas it hath been duly proved before me, That T. P. of, &c. hath lately cut and taken Wood of R. N. contrary to the Statute in that Case made and provided, which Wood was of the Value of 8 *s.* These are therefore

One Justice. One Witness on Oath.

Within Six
Weeks af-
ter the Of-
fence.

therefore to require you to cause the said T. P. to be publicly whipped in the Town of L. in case he shall not forthwith pay unto the said R. N. the said Sum of 8 s. which I do hereby order him to pay accordingly in Satisfaction for the said Wood. Given, &c.

A Warrant to search for stolen Wood.

To the Constable and Headboroughs of the Hundred of, &c.

* Within
Six Weeks.

Suffex ff. **W** Hereas I have been credibly informed by J. O. of, &c. that a Parcel of Wood was * lately cut, taken, and carried away off and from his Lands in H. in the said County, contrary to the Statute in that Case made and provided: These are therefore to require you to enter into, and search the Houses, Out-houses, or any other Places of such Persons who you shall justly suspect to have taken the same; and if you find any such Wood, that then you apprehend the Person or Persons suspected for cutting and taking it, and those in whose Houses, Out-houses, or other Places it shall be found, and bring them before me, or some other of Her Majesty's Justice of the Peace for the County aforesaid, that such Proceedings may be had against them for the said Offence as is directed by Law: And hereof fail not, &c.

An Order for Payment of Money in Satisfaction of stolen Wood, or to be sent to the House of Correction.

To the Keeper of the House of Correction.

R. W. being suspected for unlawfully cutting and taking Wood on the 21st Day of this Instant April, was brought before me, and not giving a satisfactory Account how he came by the same, nor being able to produce the Person of whom he bought it, or any credible Witness to testify upon Oath the Sale thereof, he thereupon stands convicted of cutting and spoiling the same: And it being proved before me, that R. B. of, &c. was the Owner thereof, I did therefore order and appoint the said R. W. within Six Days next ensuing to pay unto the said R. B. the * Sum of, &c. in Recompence and Satisfaction for his Damages, and that the said R. W. should likewise forthwith pay to the Overseers of the Poor of the Parish of H. where the said Offence was committed, the Sum of 9 s. And whereas the said R. W.

* 43 Eliz.
cap. 7.
15 Car. 2.
cap. 2.

hath

hath not paid the said respective Sums according to the said Order or Appointment; these are therefore to require you to convey the said R. W. to the House of Correction, and to deliver him to the Keeper thereof, together with this Warrant, commanding you the said Keeper to receive him into your Custody, and to detain him in your House by the Space of * Ten Days next after he shall be delivered unto you: And hereof fail not, &c. Given under my Hand and Seal, &c.

*Any Time not exceeding a Month.

If the Justice do not think fit to send him to the House of Correction, he may order him to be whipp'd.

Mittimus for the Second Offence.

To the Constable and Headborough of, &c.

Suffex ff. **A**S in the former Warrant, to the Words [And it being proved]. And whereas the said R. W. was once before convicted of the said Offence, these are therefore to require you to convey him to the House of Correction, and to deliver him to the Keeper thereof, commanding you the said Keeper to receive him into your said House, and to keep him there to hard Labour by the Space of One Month: And hereof fail not, &c. Second Offence.

An Order for the Buyer of stolen Wood to pay treble Damages.

Suffex ff. **W**Hereas it hath been duly proved before me, that R. N. of, &c. did within Five Days last past buy several Burdens of Wood of W. O. being a Person justly suspected to have stolen the same, contrary to the Statute in that Case made and provided, and that it was the Wood of R. B. of, &c. and was of the Value of 10 s. at the Time the said R. N. bought the same: I do therefore Order that the said R. N. do forthwith pay unto the said R. B. the Sum of 30 s. being treble the Value of the said Wood. Given under my Hand and Seal, &c.

A Warrant

A Warrant to distrain for Non-payment of the Money according to the Order above-written.

To the Constable and Headborough, &c.

Suffex ss. **R** *Ecite the former Order Verbatim. Then say:* And whereas the said R. N. hath not paid to the said R. B. the aforesaid Sum of 30 s. These are therefore to charge you to levy the same upon the Goods and Chartels of the said R. N. by Distress and Sale thereof, and forthwith to pay the same unto the said R. B. to whom it is justly due. Given under my Hand and Seal, &c.

If there cannot be any Distress taken, the Offender may be committed to Gaol for a Month without Bail.

There is a Clause in the aforesaid Statute of 35 H. 8. which relates to Justices of Peace, viz. Where there is a Wood or Coppice wherein others have *Common of Pasture*, the Lord or Owner shall not cut down the same (except for his own Use) before he and the Commoners shall agree to set out a Fourth Part thereof to be enclosed for his Use; and if they cannot agree in it, then Two Justices appointed by the Sessions shall summon Twelve Commoners and Inhabitants there, and those Justices, with the Consent of the Lord and those Commoners, shall set out a Fourth Part thereof, to be enclosed by the Lord within Four Months afterwards, and then to be felled by him; and if any Cattle shall come into that Inclosure within Seven Years after the Wood is felled, the Owner of the Cattle shall forfeit for every Beast 4 s. and during that Seven Years, the Commoners shall have no Right of Common there, and the Lord shall be barred to common in the Residue, but after the Seven Years they may both inter-common in the whole, and in case the Lord doth not fell the Fourth Part within a Month after 'tis enclosed, the Commoners may put in their Cattle as before.

This Act doth not extend to Under-woods in Kent, Surrey, and Suffex, save only to the Common Woods there.

An Information for cutting Wood, and not leaving Standils, &c.

M *Emorand. quod R. K. de H. Com. &c. qui tam pro Dentina Regina quam pro seipso sequitur in hac parte venit hic in Curia dicta Domina Regina coram ipsa Regina apud Westmon. in propria persona sua die Jovis prox. post quinden. Pasche, videlicet,*

iste eodem Termine & tam pro eadem

Domina

Domina Regina quam pro seipso dat. Curia hic intelligi & informari quod quidam R. B. de H. in Com. præd. Gen. primo die Aprilis ultimo præc. rito fuit & adhuc est possessionat. pro termino septem Anno- rum adhuc & adtunc ventur. de solo cuiusdam silvæ sive bosci vocat. Highwoods, continen. 50 Acras jacen. & existen. in Paroch. de H. in Com. præd. ac proprietarius ibidem crescen. eodem primo die Aprilis supradicto & quod præd. R. B. eodem die & diversis aliis diebus & vicibus inter dictum diem & ante diem exhibitionis hujus informationis causavit & mandavit decem Acras bosco parcell. prædict. 50 Acras posternari & succidi apud H. præd. in Com. & quod boscus præd. sic prosterнат. & succisus non fuit quodque præd. R. B. tempore succissionis bosci non relinquit duodecim

querci crescen. super quamlibet acram sic succis. juxta formam statuti in hujusmodi casu edit. & provis. unde præd. R. K. tam pro Domina Regina quam pro seipso petit advisamentum Curia in præmissis ac quod præd. R. B. forisfaciat videlicet pro quolibet sic non relit. stanse sive crescente super quamlibet acram præd. decem acrarum bosci 3 s. 6 d. juxta formam stat. præd. ac quod ipse R. K. medietatem inde habere valeat juxta statut. præd. &c.

For felling Oaks out of the Time of Barking; viz. between April 1. and last of June.

Memorand. &c. quod R. K. &c. venit, &c. quod quidam R. D. primo die Julii ultimo præterito apud H. in Com. præd. in & super boscum vocat. Highwoods, ubi quælibet carucat. corticis quercuum per totum tempus præd. valebat duos solidos ultra & supra onera excorticacionis inde succidit & succidi causavit centum quercus (Anglice Oak-Trees) idoneas excorticari (Anglice, fit to be Barked) in bosco præd. crescen. contra formam statut. in hujusmodi casu edit. & provis. quæ quidem Centum arbores querc. non fuer. impendit. nec earum aliqua impendet. fuit in vel circa edificationem sive reparatio- nem aliquarum domorum navium vel mol. ndinorum & quod quælibet quercus inde fuit adtunc pretii 10 Solidorum, unde præd. R. K. petit advisamentum Curia in præmissis ac quod præd. R. D. forisfaciat duplicem valorem præd. Centum querc. per ipsum in forma præd. suc- cis. quodque præd. so. isfactura dividatur in tres partes & ipse R. K. unum partem inde habere valeat juxta formam statuti prædict.

5 Eliz. c. 8. repealed by 1 Jac. 1. c. 22. continued per 3 Car. ca. 4. to the end of next Session of Parliament expired.

The Queen is to have the other Third Part, and the City, Corporation, or Lord of the Liberty, the other Part. Expired.

Wooll.

THIS being a Staple Commodity of the Kingdom, on which the Values of our Lands, and the Trade of the Nation doth depend ; it hath been the Care of our Laws to prevent its being transported, under very severe Penalties.

23 Ed. 3.
cap. 7.

It was above 350 Years since exporting Wooll was first made Felony ; and not only so, but the Offender was to forfeit all his Lands and Goods.

38 Ed. 3.
cap. 6.

'Tis true, this Punishment continued but Eleven Years ; for *Anno 38 Ed. 3.* that Part of the Statute which made the Offence Felony was repealed, but the Forfeiture of Lands and Goods still continued.

12 Car. 2.
cap. 2.

That and some other Laws relating to this Matter are now obsolete, and therefore *Anno 12 Car. 2.* a new Statute was made ; by which those who exported or loaded on any Carriage to be transported the Goods following, forfeit the same :

Fullers Earth or Clay.
Morlings.
Sheep.
Shorlings.
Wooll, *English* or *Irish*.
Wooll-fels.
Yarn made of Wooll.

And over and above these Forfeitures, for every Sheep exported, 1 *l.* And for every Pound Weight of other Goods, 3 *s.*

Likewise the Owner of the Ship knowing the Offence, forfeits all his Interest therein ; and the Masters and Mariners assisting, forfeited all their Goods, and were to be committed for Three Months without Bail.

Those who transported, or caused to be transported, any of those Goods, and being convicted of that Offence, were disabled to sue for any Debt.

These Forfeitures were to be recorded at the Sessions in that County where the Offence was committed, or where the Offender shall be taken, but it must be within * a Year after the Offence committed, and one Moiety is to go to the Queen, and the other to the Prosecutor.

* By 9 & 10
Will. the
Time is en-
larged to
3 Years.

And

And if any Person find such Goods on Board, or packed or loaded on any Carriage, or laid near any Water to be exported into *Scotland*, or any Foreign Parts, he may seize the same, and shall have the full Moiety to himself; but then he shall not be an Evidence upon Oath to convict the Offender, &c.

But notwithstanding this Law, great Numbers of Sheep and Wooll were transported, and therefore Two Years afterwards another Act passed to make it Felony to export any of the Goods above-mentioned, and all Persons assisting or consenting thereunto were made Felons. 14 Car. 2.
cap. 18.

By this Statute it was likewise enacted, That Wooll should not be conveyed from Place to Place, but in the Day-time, under the Penalty of forfeiting the same; one Moiety to the Queen, the other to the Prosecutor.

And to encourage the Discoverers of such Offences, it was provided, That the Owners of any Vessel, or any Master or Mariner, knowing such Goods were exported, and who at his Return, or within Three Months after his Knowledge of the Offence, shall make Information thereof on Oath before a Baron of the Exchequer, he shall not be punished as a Felon.

Offences against that Act might be tried at Sessions.

But because the punishing a Man as a Felon was thought too severe, therefore Offenders were not prosecuted for this Offence as they ought, and the Law was by this Means without any Effect; so that by 7 & 8 Will. so much of the former Act which made exporting Wooll, &c. Felony, was repealed. Cap. 23.

And lest under a Pretence of carrying Wooll to any Place or Port on the Sea-Coasts in *England*, some designing Persons might the more easily transport it; therefore by the Statute 1 Will. Owners of Wooll, or their Agents, must make an Entry of the Weight, Marks, and Numbers thereof, at that Port from whence it shall be intended to be conveyed; and this Entry must be made before they carry it within Five Miles of any such Port or Place, or otherwise the Goods carried are forfeited, and so are the Beasts and Carriages; and the Persons conveying, driving, or abetting, shall forfeit and suffer as by the former Acts against exporting Wooll. 1 Will.
cap. 32.

But People may carry their Wooll from the Sheering-place to their own Houses, tho' within Five Miles of the Sea; so as within Ten Days after the Sheering, and before they dispose the same, they certify under their Hands to the Custom-Officer of the next Port, the Number of the Fleeces, and where housed, and do not remove the same without certifying

7 & 8 W.
cap. 28.

fyng the Officer again of their Intention to remove it at least three Days before the Removal. The Penalty is the Forfeiture of the Wooll.

The Inhabitants of the Northern Counties adjoining to *Scotland* did frequently carry Wooll and other Goods above-mentioned into *Scotland*, and the *Scots* exported them into *France*; therefore *Anno 7 Will* a Law was made, Prohibiting Wooll, &c. to be carried on Land in the said Counties, or within Five Miles of the Sea, but between Sun-rising and setting, upon Pain of Forfeiture of Goods, Horses and Carriages.

If transported in a Ship, that is forfeited, together with the Goods, and treble the Value thereof, and treble Costs; and the Inhabitants of the *Hundred* next adjoining to *Scotland*, or to the Sea-Coasts, out of or thro' which any Wooll shall be carried or exported, forfeit 20 l. if the Wooll is under the Value of 10 l. and if above that Value, then treble what the Wooll is worth, and treble Costs of Suit, to be recovered by Action of Debt, &c. and Execution shall be had against two or more of the Inhabitants of the *Hundred*; and the Justices in Sessions may reimburse them, by rating the Towns, Parishes and Hamlets in that *Hundred*, as by the Statute of *Hue-and-Cry*, and cause the Penalties to be levied by an equal Assessment on the Inhabitants.

Those who are convicted of Aiding, Abetting or Assisting, to the carrying or exporting Wooll as aforesaid, shall be committed three Years without Bail, and both they and the Owner of the Wooll shall satisfy treble the Value of such Forfeitures and Penalties with which the Inhabitants of those *Hundreds* shall be charged, and treble Costs of Suit; and this shall be for the Use of the said Inhabitants, to be recovered by Action of Debt, &c. in the Name of the Clerk of the Peace, without naming his Christian or Surname.

But the Jury must not be of that County where the Fact was committed.

And to encourage Persons to discover these Offenders, the first three Persons who have been aiding or assisting in carrying out or exporting Wooll, or any of the aforesaid Commodities; and who shall inform any Justice of Peace of those *Northern Counties*, whereby the aforesaid Punishment and Penalties may be inflicted and recovered; such Discoverer, not being Owner of the Wooll, &c. shall be acquitted.

But no Man entitled to the Penalties and Forfeitures shall compound with any Hundred liable to pay the same, for a lesser Sum than what is given by the Act; if he doth, it shall be lawful for any other Person to sue for and recover the same, and the Person compounding must be imprisoned for 5 Years without Bail.

The first Act, *anno 1 Will.* was Temporary, but it was continued by 4 & 5 Will. and farther continued by 7 Will. which was also continued by 9 & 10 Will. that being Explanatory of the former Laws; by which Act it is enacted, That Wooll lodged within ten Miles of the Sea, either in *Kent* or *Suffex*, the Owner thereof must within Three Days after Sheering give an Account in Writing to the next Custom or Port-Officer; and if lodged within 15 Miles of the Borders of *Scotland*, then he must give an Account, &c.

9 & 10 W.
cap. 40.

1. The Number of Fleeces.
2. Where lodged, or housed.

And before he removes it, he must give the like Notice in Writing, *viz.*

1. The Number of Fleeces.
2. Where lodged.
3. To whom disposed.
4. Where intended to be carried.

The Wooll is otherwise forfeited, and 3 s. for every Pound Weight besides, and so is all the Wooll found within 15 Miles of the Borders of *Scotland*, and not entered.

The Officer is to enter this *gratis*, and must give a Certificate, specifying the Owner and Buyer, and the Place and Time of the Removal, *viz.* That 'tis to be removed from such a Place, and within a Time by him limited.

If the Wooll be removed from the Place where first lodged after Sheering, it shall not be lodged again within 15 Miles of the Sea, under the like Penalty, *viz.* Forfeited, if found, 3 s. for every Pound Weight.

Persons residing within 15 Miles of the Sea, either in *Kent*, or *Suffex*, shall not buy Wooll before they enter into Bond to the Queen, with Sureties not to sell the said Wooll unto any Person within 15 Miles of the Sea; and if such Wooll is carried towards the Sea-side and not entered, and no Security given, 'tis forfeited, and likewise 3 s. for every Pound Weight.

*But if carried away, then 3 s. for every lb. Weight.

Concealing Wooll within 15 Miles of the Sea, and not entering it, such Wooll shall be seized and forfeited, and the Persons claiming it must give Security in the *Exchequer* (if cast upon a Trial) to pay treble Costs over and above the Penalties and Forfeitures.

The Forfeitures are to be divided, *viz.* One Third to the Queen, the other Two Thirds to him who seizes or sues for the same.

The Queen may order Prosecution at any Time within three Years.

The General Issue may be pleaded, and the Special Matter given in Evidence; and if the Plaintiff is cast or discontinues, he pays treble Costs.

The Woollen-Manufactures encreasing in *Ireland*, and in the *English Plantations in America*, and being exported from thence to Foreign Markets, which were formerly supplied from *England*; therefore a Law was made, *Anno 10 & 11 Will.* to prohibit the Exportation of these Goods following from *Ireland*:

Bays.
Cloths.
Cloth Serges.
Druggets.
Drapery Stuffs.
Frizes.
Kerseyes.
Mortlings.
Says.
Shalloons.
Serges.
Shorlings.
Wooll.
Wooll-fels.
Wooll-flocks.
Woollen-Manufactures.
Worsted-Bays.
Woollen-Yarn, made or mingled therewith.

The Penalty for the Exporter, and for those who load, or cause to be loaden on an Horse, Cart or Carriage, or on Board any Vessel in any Parts in *Ireland*, to the Intent to export the same (except into *England*) is Forfeiture of the Goods, and 500 l. for every such Offence.

But such Goods may be transported

| | | | |
|------|---|---|---------------|
| From | { Cork,
Drogheda,
Dublin, | { Kingsale,
Waterford,
Youghall, | } in Ireland; |
| To | { Barnstaple,
Biddiford,
Bridgewater,
Bristol, | { Chester,
Liverpool,
Milford-Haven,
Minehead, | } in England: |

So as Notice be first given to the Commissioners of the Customs here, or to the Customer or Collector in the Port, to which the same is intended to be brought,

Of the { Quality,
Quantity,
Package,
Marks,
Numbers thereof,
Names of the Ship,
Names of the Master,
Place or Port,
Where intended to be brought:

And Bond entered into to the Queen, with one or more Sureties, in treble the Value of the Goods, that the same (Danger of Seas excepted) shall be landed accordingly.

And there must be a Licence under the Hands of three of the Commissioners, or under the Hand of the Chief Customer or Collector of the Port where such Bond is given, for the landing and importing such Wooll, &c.

And to prevent the Exportation of Wooll out of *England* or *Ireland*; the Lord High Admiral is to appoint two Fifth and two Sixth Rates, and eight armed Sloops, constantly to cruize on the Coasts of *England* and *Ireland*; and to encourage the Commanders and Seamen, they are to seize such Ships and Wooll, and they are declared to be forfeited, and they are to lodge the Wooll in the Queen's Ware-house, in such Port where it shall be seized or brought, until it shall be condemned; and then the Wooll, Ship and Tackle, shall be exposed to Sale by Inch of Candle, there being first Notice given thereof in Writing 21 Days, both at the Custom-House of the said Port, and on the *Royal-Exchange* in *London*; and one fourth Part of the Money shall be to the Commander, another fourth Part to the Officers of the Ship that took the Prize, another fourth Part to the Seamen, and the rest to the Queen.

And every Commander neglecting his Duty, or compounding for any Wooll or Ship taken, or conniving at Exportation of Wooll, forfeits all his Pay, must be committed for Six Months, and made incapable for ever of serving the Queen at Sea.

Then there is a Clause, prohibiting Exportation of Wooll, Yarn, &c being of the Product or Manufacture of the English Plantations in America, under severe Penalties. See the Act at large.

11 & 12
Will.

But some Disputes having arisen concerning the Act before mentioned; therefore by another Act made in the very next Year, 'tis declared, That that Act shall not subject any Person or Vessel to the aforesaid Penalties, for or concerning such Wooll-fels as shall be necessary for the Gunner or Boat-swains Stores, or for such other Woollen Manufactures as shall be for the proper Use for Clothes of Seamen or Passengers for their own Wearing, and shall not exceed above 40 s. for one Mariner.

Working
in Wooll.
Annæ.

But as 'tis necessary to prohibit the Exportation of Wooll, so 'tis requisite to prevent any Fraud which may be committed by Persons working in the Woollen Manufacture; and therefore by a late Act 'tis provided, That any Person employed in working Wooll, Linnen, Fustian, Cotton or Iron Manufactures, and who shall imbezel or purloin

Thrums,
Ends of Yarn,
Wests,
Material of Wooll,
Hemp,
Flax,
Cotton,
Iron,

with which he shall be intrusted to work on, or shall reel short or false Yarn, shall forfeit double the Value of the Damages done, to the Use of the Poor of the Parish where done: Conviction is to be before One Justice by the Oath of one Witness, or by the Confession of the Party accused.

If the Offender refuse to pay the Forfeiture, the Justice may commit him to the House of Correction until he pay it; and if it shall appear to the Justice that he is not able to make Satisfaction, then he shall be there whipped, and kept to hard Labour not exceeding 14 Days.

Buying or receiving any of these Goods before mentioned, incurs the like Penalty, and must be convicted as before.

Yorkshire West-Riding.

THIS Part of *Yorkshire* is the chiefest Place in the *North of England* for Woollen Manufacture, and most of the Traders in Wooll there are Freeholders ; But because there was no Register, they found it difficult to borrow Money on Land-Securities, which though really good, yet did not satisfy the Lenders ; therefore a Law was made, for a publick Register to be kept at *Wakesfield*, in which a Memorandum of all Deeds and Wills were to be registred at the Election of the Party, and those which were not registred should be accounted fraudulent. 2 Annæ.

That the Register should be chosen by Ballotting ; that is, every Freeholder of 100 *l. per Annum*, should put in a Glass-Vessel the Name of him that he would have chose.

That the Justices of the *West-Riding*, for that Purpose assembled, should be Scrutators of the Ballot, or the major Part of them, or any Five they shall appoint.

That Three Justices, &c. must swear the Register, and Two may swear his Depury ; and that when the Register is sworn, he must immediately enter into a Recognizance of 2000 *l.* with Two Sureties before Five Justices, for the true Performance of his Office.

This Recognizance must be transmitted by the Five Justices, within One Month after the Date thereof, to the Remembrancer's Office ; and these Five Justices must approve of the Sureties under their Hands and Seals, which Approbation must be registred at the next Sessions. *See the Act at large.*

Every Corps must be buried in Woollen, on Pain of Five Pounds to the Poor of the Parish where buried, and to the Prosecutor.

Ministers must keep a Register of Burials, and some Person within 8 Days after the Burial must bring an $\dagger$ Affidavit to the Minister, that the Person was buried in Woollen, &c.

taken before a Justice of Peace, Master in *Chancery*, Mayor, Bailiff, or chief Officer, &c. And per 32 *Car. 2.* before the Parson, Vicar or Curate, except where the dead Person is buried.

If such Affidavit is not brought, then the Five Pounds may be levied by Warrant from one Justice :

1. On the Goods of the Party deceased ; and if he hath none,

2. On

The Act
for Bur-
ing in
Woollen,
30 *Car. 2.*
cap. 3.

$\dagger$ It must be

2. On the Goods of the Person in whose House he died.
3. Or on the Goods of any who had a Hand in putting him into the Coffin, or that ordered the same.
4. And if a Servant, and dying in his Master's Family, then on the Master's Goods; and if a Child, then on the Parents Goods.

But in this Case, the Minister must give Notice, and certify under his Hand to the Church-wardens or Overseers of the Poor, That no such Affidavit was brought to him within the Time limited by the Statute.

Then the Church-wardens, &c. may within Eight Days after such Notice bring the Certificate of the Minister to the Justice of Peace, who thereupon grants a Warrant to levy the Forfeiture.

Ministers and Magistrates neglecting their Duties, forfeit Five Pounds for every Offence, to be recovered by Action of Debt, Bill, Plaint or Information, so as it be commenced within six Months after the Offence; one Fourth to the Queen, Two other Parts to the Poor, &c. where the Offender dwells, the other Fourth Part to the Informer.

The Form of a Certificate of the Minister where no Affidavit was brought.

To the Church-wardens and Overseers of the Poor of the Parish of, &c.

Suffex ff. I G. W. Rector of R. in the County aforesaid, do hereby certify unto you, That E. A. was buried in the said Parish of R. on *Thursday* the 21st Day of this Instant *April*, and that within Eight Days next after the said Burial no Affidavit was brought to me concerning the Burial of the said E. A. in Woollen, pursuant to the Statute in that Case made and provided. Witness my Hand this 30th Day of *April*, &c.

A Warrant to levy the Five Pounds.

To the Constable and Headborough of, &c.

Suffex ff. **W**Hereas I have received a Certificate under the Hand of G. W. Rector of the Parish of R. in the County aforesaid, bearing Date the 30th Day of, &c. That E. A. was buried in the said Parish on *Thursday*, &c. and that the said G. W. had not received an Affidavit within Eight Days afterwards, that the said E. A. was buried or wrap'd in no other Material but Sheeps Wool only, pursuant to the Statute in that Case made and provided: These are therefore to require

require you forthwith to levy the Sum of Five Pounds of lawful Money by Distress and Sale of the Goods and Chattels of the said Deceased; and that you apply one * Moiety thereof to the Use of the Poor of the said Parish of R. where the said E. A. was buried. Given under my Hand and Seal, &c.

* Other Moiety to the Profe-
cutor.

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